

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION  
CASE NO. 23-cr-80101-AMC

UNITED STATES OF AMERICA, Fort Pierce, Florida

Plaintiff, March 1, 2024

vs.

10:02 a.m. - 3:00 p.m.

DONALD J. TRUMP, WALTINE NAUTA, CARLOS  
DE OLIVEIRA,

Defendants. Pages 1 to 201

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TRANSCRIPT OF SCHEDULING CONFERENCE AND MOTIONS  
BEFORE THE HONORABLE AILEEN M. CANNON  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT:

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Official Court Reporter to the

Honorable Aileen M. Cannon

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United States District Court

Fort Pierce, Florida

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1 (Call to the Order of the Court.)

2 THE COURT: Good morning. You may all be seated.

3 All right. Let's call the case, please.

4 COURTROOM DEPUTY: United States of America vs. Donald  
5 J. Trump, Waltine Nauta, and Carlos De Oliveira, case number  
6 23-criminal-80101.

7 THE COURT: All right. We will get appearances first,  
8 starting with counsel for the Office of the Special Counsel.

9 MR. BRATT: Good morning, Your Honor. Jay Bratt and  
10 David Harbach on behalf of the United States.

11 THE COURT: Good morning to you both.

12 Who is here for the defendants?

13 MR. BLANCHE: Good morning, Your Honor. Todd Blanche,  
14 and I'm joined at counsel table with President Trump and also  
15 my co-counsel Emil Bove and Chris Kise. Good morning.

16 THE COURT: Good morning.

17 MR. WOODWARD: Good morning, Your Honor. Stanley  
18 Woodward and Sasha Dadan, and with us is Mr. Nauta.

19 THE COURT: Good morning to you as well.

20 MR. IRVING: Good morning, Your Honor. John Irving and  
21 Donnie Murrell for Mr. De Oliveira who is here as well.

22 THE COURT: Good morning.

23 All right. We have a full house. I'm going to start  
24 off with some preliminary remarks.

25 As we have done in the past, there is an overflow room

1 set up in the courthouse with the live feed into the courtroom.  
2 If at any point something goes wrong with the transmission, I  
3 ask our IT team to please advise me as soon as possible so we  
4 can rectify any issues.

5 Second, for those of you who have a seat in the  
6 courtroom and to minimize disruption, I ask that you remain  
7 seated while the court is in session, unless there is an  
8 emergency.

9 And third, as I have indicated before, the use of any  
10 electronic devices is strictly prohibited in the courthouse.  
11 This is by administrative order and that includes, of course,  
12 this courtroom, along with the overflow room. So I expect  
13 everybody's close adherence to that rule, understanding too the  
14 penalties set forth in that order for knowing or willful  
15 violations.

16 Now, for the purpose of today's hearing, as I noted in  
17 a prehearing order, this is a combined scheduling conference  
18 and hearing to discuss, first, the balance of the pretrial  
19 deadlines and hearings in this case since entry of the Court's  
20 partial scheduling order at docket entry 215. As the parties  
21 might recall, that order, entered in mid November of last year,  
22 set forth the first batch of initial pretrial deadlines and set  
23 this conference to discuss remaining deadlines and motions in a  
24 reasoned manner.

25 To that end, and to best navigate the pretrial phase of

1 this complex proceeding, I ordered and received yesterday  
2 competing proposals on matters of scheduling which I have  
3 reviewed. I expect the parties to be prepared to discuss those  
4 proposals in light of the numerous pretrial motions that have  
5 been filed to date, along with the associated requests for  
6 hearings. And by latest count, I think the pretrial motions  
7 stand at 20, which includes a substantive CIPA Section 4 motion  
8 as to the former president.

9 Now, as part of this scheduling discussion, I also ask  
10 that counsel be prepared to discuss the scheduling of requested  
11 hearings on the defense motions to compel discovery, which  
12 consist of six motions to compel in one consolidated filing  
13 plus attachments, and which present a contested and possibly  
14 threshold question about the definition of the prosecution team  
15 for purposes of discoverable information in the possession,  
16 custody or control of the government.

17 I think the scheduling discussion will lead us probably  
18 to lunch, maybe less, so I anticipate recessing for about an  
19 hour around noon, and then resuming for an afternoon session to  
20 hear legal argument from the parties and also from the  
21 Press Coalition as Amicus on the various pending matters  
22 related to sealing and redactions in the case. Those issues  
23 have now been raised in five pending motions on issues related  
24 to sealing and redaction of voluminous exhibits appended to  
25 pretrial motions in this case. And they now implicate numerous

1 pretrial motions filed temporarily in camera.

2 So with that broad agenda in mind, let us begin. I'm  
3 going to ask that for each of the attorneys presenting  
4 argument, that you do so from the podium. I will have some  
5 questions as we go along and we will do some back and forth as  
6 necessary.

7 So with that, let me start with counsel for the Special  
8 Counsel on issues related to scheduling.

9 MR. BRATT: Thank you, Your Honor.

10 Like the Court, we also received the defense's proposed  
11 scheduling order last night and have reviewed it. There is a  
12 lot going on in it with the shading and the color coding. They  
13 have primary and caucus dates, Mr. Woodward's other trial, the  
14 apparent -- what appears to be a vacation by Mr. Woodward in  
15 August that takes him out of the box for almost the entire  
16 month; he can discuss that.

17 But looking at it, the one thing I think the parties do  
18 agree on is that this case can be tried this summer. We have  
19 proposed the July 8th date. We think that's the better date.  
20 And we think it is doable.

21 THE COURT: All right. So let's, I guess, dig into the  
22 details. I see that you have allotted what appears to be one  
23 day for a hearing on motions to compel and one day for a  
24 hearing on pretrial motions, which, of course, at this point, I  
25 believe consist of at least 13 substantive pretrial motions,

1 many of which involve lengthy exhibits and attachments. And so  
2 I'm just curious, Mr. Bratt, how that's going to work, and to  
3 accommodate, of course, enough time for judicial resolution of  
4 these motions.

5 MR. BRATT: Sure. And every Court is different. We  
6 think that some of these motions are ones that the Court can  
7 decide without argument. We understand that one day may not be  
8 enough, but we think that a lot of those motions can be argued  
9 in a day, or a day or two. We disagree that with respect  
10 to -- I will call them the Rule 12 motions, the most recently  
11 filed motions. We disagree that with respect to the Rule 12  
12 motions, that any evidentiary hearing is necessary. We will  
13 respond to their request for a Franks hearing, but we don't  
14 believe they have met that very high standard. So for just  
15 legal argument on these motions --

16 THE COURT: The high standard that you're referring to  
17 is the Franks standard?

18 MR. BRATT: Yes, Your Honor, the Franks standard.  
19 Correct.

20 So for the legal standard -- I mean, the -- just to do  
21 oral argument on these motions, maybe a second day, but we  
22 don't think it's going to take as many days or be as  
23 complicated as the defense believes.

24 THE COURT: All right. Well, I think to try to do 13  
25 substantive motions in one day, even two days is -- seems

1 unrealistic and would, I think, sacrifice the Court's  
2 consideration and hearing on those matters. So a more  
3 realistic assessment of hearing time in your view would be  
4 what?

5 MR. BRATT: So, again, we want to be flexible. We want  
6 to be reasonable. I would say three days at the -- at the  
7 outer limit.

8 THE COURT: All right. Now, what is your view on the  
9 evidentiary hearing with respect to the motion to compel?

10 MR. BRATT: We, again, don't believe they've met the  
11 high standard. The way Mr. Harbach and I have divided things,  
12 if you want more legal argument on that, I will turn it over to  
13 Mr. Harbach. I'm sort of more focused on the scheduling today.

14 THE COURT: Okay. Okay. But just in terms of  
15 scheduling for the hearing on the motion to compel, I guess,  
16 first, do you view that as a Rule 12 motion seeking discovery  
17 under Rule 16?

18 MR. BRATT: So I don't know if you would call it a  
19 Rule 12. We believe it is a motion that can be handled through  
20 oral argument. Actually, I think that's one of the few dates  
21 that we -- both sides agree upon, which is, I think,  
22 March 20th. Or maybe we're March 18th, they're March 20th.

23 I would add that we would likely have to do part of  
24 that argument in a secure facility since they do have their  
25 classified supplement to their motion to compel. But we



1 believe, again, argument on that motion can --

2 THE COURT: So you don't see any factual disputes as  
3 presented based on the showing made thus far?

4 MR. BRATT: We don't think there are any relevant  
5 factual disputes.

6 THE COURT: Okay. And why is that?

7 MR. BRATT: Well, the biggest factual dispute is in the  
8 narrative of how this case came into being. That is not  
9 something that is relevant to any request for discovery. It is  
10 not an issue the Court has to resolve. If -- they may be  
11 competing versions at trial, they may cross-examine some  
12 witnesses on that subject. We may have some views in our  
13 motions in limine about what is proper with respect to that.  
14 But we don't have to have a mini trial on what happened between  
15 January 20th, 2021, and February of 2022.

16 THE COURT: Does that not have any implication, though,  
17 to the definition of the prosecution team according to  
18 11th Circuit standards on that issue?

19 MR. HARBACH: Your Honor, I apologize for interrupting,  
20 but as Mr. Bratt said, if Your Honor wants to entertain  
21 argument on that portion now, I will request leave to argue  
22 that.

23 THE COURT: Well, it's an argument related to  
24 scheduling. If you want to stand in for Mr. Bratt on this, you  
25 are welcome to.

1 MR. HARBACH: Thank you, Your Honor.

2 MR. BRATT: Thank you, Your Honor. I will be back for  
3 the others.

4 MR. HARBACH: Good morning, Your Honor. Sorry for any  
5 confusion. We divided duties based on the different items on  
6 Your Honor's scheduling order, so that's why I'm doing this  
7 one.

8 On the scope of the prosecution team, in their motion  
9 to compel, the defendants, I think it's important to say, first  
10 of all, they seek discovery on a single issue; and that is what  
11 Your Honor has pointed out, the scope of the prosecution team.  
12 But -- and equally important to remember at the outset, that in  
13 the government's view, what's really going on here is that the  
14 defense is trying to use the scope of the prosecution team in  
15 the context of their motion to compel as a doctrinal hook to  
16 suggest that a hearing is necessary on what Mr. Bratt just  
17 alluded to. There are baseless theories about the origin of  
18 this prosecution.

19 Now, whether the Court credits what I just said or not,  
20 in the government's view there are plenty of other reasons not  
21 to permit a hearing of the sort that is requested here.

22 First, it's totally unnecessary. As we have explained  
23 in our papers, the Court can resolve many of the defendants'  
24 requests without even reaching the question of the scope of the  
25 prosecution team. There is the threshold question, just as an

1 initial example, of whether any of what they seek is even  
2 discoverable, which, as we pointed out in the papers --

3 THE COURT: Right. But why wouldn't that happen after  
4 case file reviews, following a -- a defined prosecution team?  
5 And then -- and then you would make determinations about  
6 discoverability, assert whatever privileges you think might be  
7 warranted.

8 MR. HARBACH: Because in our view the requests that  
9 they have put forth in their motion to compel are deniable on  
10 their face as not seeking discoverable information irrespective  
11 of what the scope of the prosecution team is. And that's for  
12 at least three reasons. And these are all laid out in our  
13 papers. Many of the requests are not material to preparing the  
14 defense. If the Court decides that that is the case, it  
15 doesn't matter what the scope of the prosecution team -- if the  
16 request doesn't seek discoverable information under Rule 16,  
17 that's the end of it. That's --

18 THE COURT: Okay. So let's just, as an example, take  
19 the folks that were involved in -- from the Intelligence  
20 Community making decisions in consultation with the Special  
21 Counsel about what to use, litigation strategy, and so on and  
22 so forth.

23 MR. HARBACH: Sure.

24 THE COURT: So taking that as an example, why haven't  
25 the defendants made a good faith colorable showing that they're

1 entitled to better understand the degree of interconnectedness,  
2 given -- given that -- given that working relationship? Which  
3 I'm interested in hearing more about in terms of the degree of  
4 collaboration.

5 MR. HARBACH: Okay. Your Honor just asked me why  
6 haven't they made a good faith showing that they are entitled  
7 to this. And I'm going to answer that question. But if  
8 Your Honor will permit me to preface my answer just for a  
9 moment. Because this implicates not only the Intelligence  
10 Community components that they've sought to allege are part of  
11 the prosecution team, but others as well.

12 Let's just -- I think it's important to state, for the  
13 record, what the defense's position is. And this is the list  
14 of entities that they say is part of the prosecution team. And  
15 I will try not to go too fast.

16 THE COURT: And -- but, no -- and I understand that's a  
17 very lengthy list. But in a more functional sense, the people  
18 within the Intelligence Community that actually worked with the  
19 Special Counsel in making particular decisions about what to  
20 charge, what could be used --

21 MR. HARBACH: Oh, okay.

22 THE COURT: -- what could be redacted, what could be  
23 withheld --

24 MR. HARBACH: Okay.

25 THE COURT: -- those sorts of quite important

1 decisions, I think, arguably could say are very comfortably  
2 within the prosecution team definition.

3 MR. HARBACH: Yes. Were that the case, we might agree  
4 with you. No member of the Intelligence Community, no single  
5 person had any role whatsoever in consulting with the Special  
6 Counsel about what should be charged here. That did not  
7 happen. And that is the point we've tried to make over and  
8 over in our papers.

9 THE COURT: All right. So, then, perhaps maybe some  
10 sealed declarations to that effect or something that would shed  
11 light on the degree of collaboration, either pre- or  
12 post-indictment, whatever the facts indicate.

13 MR. HARBACH: If Your Honor will allow me, I think that  
14 to answer that question about why a -- a sealed declaration  
15 from somebody at the National Geospatial Intelligence Agency  
16 isn't necessary here, I just want to make a couple of points.

17 First, as we laid out in our papers, none of these  
18 entities, the long list that Your Honor mentioned and --  
19 because you don't want me to, I won't go through the list of --

20 THE COURT: Well, it's there. I don't think we need to  
21 waste time reading them.

22 MR. HARBACH: It's 20 -- it's 20. It's 20. 20  
23 different entities, including the White House, a whole bunch of  
24 members of the Intelligence Community, the State Department,  
25 the Department of Energy, and the United States Secret Service.

1 The list alone, we think, is -- carries some message about the  
2 frivolousness of their argument. But I will leave that. I  
3 will leave that.

4 More to the point, none of those agencies that  
5 have -- that are on that list were involved in formulating  
6 investigative strategy, collecting evidence, issuing subpoenas,  
7 interviewing witnesses or doing anything remotely resembling  
8 pooling investigative strategies with the Special Counsel's  
9 office. Now, all those things that I mentioned, as I know  
10 Your Honor knows, are factors that appellate courts have  
11 said -- well, sorry, courts have said should be taken into  
12 account in assessing this question.

13 Now, I'm going to get to your question. The defendants  
14 claim that they are entitled to a hearing on the scope of the  
15 prosecution team, but with no evidence at all to the contrary,  
16 zero. And more to the point, they cite no authority, no  
17 authority at all, justifying an evidentiary hearing to rebut  
18 the proffers that the government has made in its papers with,  
19 again, not a single iota of countervailing evidence. They  
20 don't get to say we should have an evidentiary hearing on what  
21 Your Honor just suggested a moment ago or demand a declaration  
22 from some official at one of these intelligence agencies just  
23 because they don't like -- they don't like it. They don't like  
24 the fact that they don't have any evidence to support their  
25 theory.

1           Again, back to the case law. There is no -- they have  
2   cited no authority. We think there is no authority for holding  
3   that they get an evidentiary hearing to explore prosecutors'  
4   interactions with other governmental agencies in a criminal  
5   investigation. I mean, that's Saab Moran. There is no  
6   entitlement to discovery on how the government collects and  
7   prepares discovery. And if -- I mean, they're going to get up  
8   here and argue in a minute -- if the answer -- if the answer  
9   is, well, all these agencies are effectively tools of President  
10   Biden, that's what we understand them to be saying, well,  
11   that's a selective prosecution claim. That's not a Rule 16  
12   discovery, motion to compel claim. That's an Armstrong claim.  
13   And granting relief under Armstrong requires a rigorous  
14   showing. That's all I will say about it now because that's the  
15   subject of additional briefing. But it's rigorous showing.

16           And as we point out in our surreply filed recently, a  
17   hearing on that subject would be unprecedented in this  
18   district. So this is what I meant when I started, this reveals  
19   what is really going on here. This whole exercise -- I'm --  
20   this whole exercise is an effort to try and wring out of this  
21   Court an evidentiary hearing out of their motion to compel.  
22   That is just an end run around Armstrong, which they know they  
23   can't satisfy, and so they're trying this alternate means to  
24   get it. That's what this really is all about.

25           So I hope I have answered your question about why the

1 government should not be put to the burden of producing  
2 declarations to substantiate all of the proffers that we made,  
3 when they have produced not a single piece of evidence to  
4 suggest that any of them is false.

5 THE COURT: All right. I mean, ordinarily parties'  
6 entitlement to a hearing requires an examination of whether the  
7 seeking party has alleged facts that, if true, would entitle  
8 him or her to relief. And so I will have these questions for  
9 defense counsel, but it seems like you're almost requiring of  
10 them a degree of -- a burden of proof at this stage merely to  
11 obtain a hearing, which I'm not quite sure is consistent with  
12 the general standards for allowing a party to obtain an  
13 evidentiary hearing; and, in this case, an opportunity for both  
14 sides to provide whatever evidence they deem relevant or  
15 appropriate, including potentially folks on -- on the  
16 government's side in the form of affidavits or other evidence.

17 MR. HARBACH: Were that the case in the abstract, the  
18 Court might well be right. But this isn't that. This  
19 is -- this is a selective prosecution claim in effect. It  
20 requires a higher standard. And even if you don't --

21 THE COURT: Right. But hold on one moment. The  
22 prosecution team issue is framed as "we need a definition of  
23 the prosecution team." We then need case file reviews, as far  
24 as I can tell. And then, depending on whatever discovery we  
25 obtain, then we go one by one on the potential additional



1 requests for -- for compelled discovery. And so why wouldn't  
2 that be the logical step-by-step process here?

3 MR. HARBACH: You're right. That is the way they  
4 framed it. And the answer is what I have been trying to say  
5 this morning. The reason that they have set the allegedly  
6 threshold question of what the prosecution team is, as being a  
7 necessary predicate to resolve the rule -- sorry -- the motions  
8 to compel, the reason that they're doing that, is what I have  
9 said a couple of times already. And what we're saying is,  
10 Number 1, that's wrong. You don't have to decide the scope of  
11 the prosecution team, even as a theoretical matter, in order to  
12 resolve their motions to compel. And second, even as to the  
13 tiny subset for which that -- that might -- it might actually  
14 be relevant to the Court making the decision, they don't get an  
15 evidentiary hearing on it for the reasons I said a moment ago.  
16 That's the way -- that's the way we see it. And that's why we  
17 think that no evidentiary hearing is even remotely warranted  
18 here.

19 This isn't just a regular run-of-the-mill motion on  
20 which a party is seeking a hearing, like Your Honor was  
21 describing a moment ago. There is a -- there is a higher  
22 standard here that is required, both by Saab Moran and by  
23 Armstrong.

24 Now, the government recognizes, I think most criminal  
25 lawyers realize, that in this situation, yeah, that's a high

1 standard. It's rare. And it should be. It should be.

2 THE COURT: All right. Let me -- let me hear again  
3 from Mr. Bratt just circling back on some scheduling issues.  
4 I'm sure I will have more questions for you, Mr. Harbach --

5 MR. HARBACH: Very good, Your Honor.

6 THE COURT: -- later on.

7 Thank you.

8 Again, looking at the proposal here for scheduling, I  
9 think it's important to do things in a reasoned way and one  
10 that doesn't jump ahead in a way that then becomes disorganized  
11 for judicial resolution purposes.

12 And so in your view, Mr. Bratt, what are sort of the  
13 immediate priority items to address, let's say, in the next  
14 30 days?

15 MR. BRATT: Yes, Your Honor.

16 And I think maybe --

17 THE COURT: Oh, and I'm sorry to interrupt you, but  
18 taking into account the redaction/sealing issues which have now  
19 essentially put a hold on full briefing of the pretrial  
20 motions. To some extent, there have been, of course,  
21 inabilities to file publicly certain documents, and sort of  
22 before those issues are resolved, it's hard to see these  
23 pretrial motions being fully briefed and then heard in open  
24 court without doing some sort of constant courtroom closure  
25 framework which seems a bit odd.

1 MR. BRATT: So I think our hope, and especially the  
2 proceedings that will occur this afternoon should help resolve  
3 those issues. We don't propose having the hearing or hearings  
4 on the Rule 12 motions until April. So we're still more  
5 than -- I think April 3rd is the date that we proposed. So we  
6 are more than a month out from that. While it is true that the  
7 public is limited in what it can see, the Court has everything,  
8 we have everything. When we file our oppositions, they will  
9 have everything from us.

10 So the parties can work on those and start working  
11 toward a resolution and working toward whatever hearings and  
12 arguments the Court wants to hear next month.

13 THE COURT: All right. It's just that what's been  
14 generated by the -- by the competing arguments on sealing and  
15 redaction is essentially a docket that is now becoming full or  
16 fuller of seal requests in a way that I'm not sure is  
17 consistent with the presumption of public access. And so I'm  
18 concerned that now we have all these pretrial motions; they  
19 implicate references to discovery material which then prevents  
20 the public filing of those motions. It prevents the public  
21 hearing on those motions to at least some extent. And then it  
22 might even impact the judicial orders on those motions. And it  
23 just becomes more complicated in that sense, given -- like, I  
24 think, there are five pending motions on redaction alone.

25 MR. BRATT: So I think, Your Honor, one important thing

1 to recognize, as we argued in our papers, is that many of the  
2 attachments that are being appended to these motions, they cite  
3 them for maybe one or two points. I can think of one example  
4 where they -- there is a 10-page FBI 302 of a government  
5 witness. They are essentially relying on one line in that 302,  
6 yet they have put the entire 302 in. They've put entire grand  
7 jury transcripts in. If the Court focuses on what these  
8 materials are actually being cited for, it is fairly minimal in  
9 contrast to the size of what they've appended to their briefs.

10 And, again, I think if the Court, hopefully through the  
11 argument it hears this afternoon and the briefing and even the  
12 contribution from the Press Coalition, the Court should be able  
13 to come to a decision on, all right, this is what the public  
14 facing part of this will look like. And at the same time, this  
15 is what the Court and all the parties have in front of them for  
16 resolution of the motions.

17 THE COURT: Okay. Does any of what you just said  
18 require the Court's ruling to be what the Special Counsel has  
19 sought 100 percent?

20 MR. BRATT: I always want to be careful about  
21 "100 percent" because sometimes 98 percent will be  
22 satisfactory. But we do think there are important principles  
23 at stake. So that, again, for example, there may be some email  
24 chains that they want to have, and they're using it for one  
25 purpose, but elsewhere in the email chains, other witnesses,

1 what other witnesses may have said to an FBI agent are in that  
2 same chain. That does not have to be -- one, it's not anything  
3 the Court needs to consider to decide the motion, but it is  
4 also not something at this point in time before witnesses start  
5 taking the stand that has to become public.

6 THE COURT: All right. Okay. Thank you. I may have  
7 some additional scheduling related questions as we proceed, but  
8 let me turn and hear argument from counsel for --

9 MR. BRATT: May I just address one -- because I think  
10 we will probably go back and forth on some of the unclassified  
11 dates. But our biggest problem with their scheduling order is  
12 that from the end of this month through late May nothing  
13 happens. And we understand a lot of that is driven by the  
14 trial that Mr. Blanche has with President Trump. Just two  
15 observations. One, when the Court set the May 20th date, that  
16 was a known fact that trial. And two, and I made this point  
17 before, and I know Mr. Blanche wasn't happy with it, but  
18 Judge Merchan in New York about two weeks ago made the same  
19 point, which is that he took this representation knowing he had  
20 the other representation. And --

21 THE COURT: I'm sorry. He took this representation --

22 MR. BRATT: He, Mr. Blanche, took on this case after he  
23 knew that he already had the New York case. And, again, that  
24 is his choice. It's President Trump's choice of counsel. We  
25 respect that. But that can't drive the dates here.

1 THE COURT: Right. But it's not just the choice of  
2 counsel, it's -- it's the accused's right to be present and  
3 participate.

4 MR. BRATT: Yes, yes.

5 THE COURT: And so that has to come into the equation  
6 to some extent within reason.

7 MR. BRATT: Right. So that -- which leads to what I  
8 was about to say next. That if you look at our proposed  
9 scheduling order, we have, I think, only one hearing scheduled  
10 during that period of time on April 3rd, which, our  
11 understanding is that is a day that the court New York is not  
12 sitting. And the remainder of the dates that we have during  
13 that period are court filings, and very crucial court filings  
14 to keep this case moving along.

15 THE COURT: But I can assure you that in the background  
16 there is a great deal of judicial work going on. So while it  
17 may not appear on the surface that anything is happening, there  
18 is a ton of work being done in the background because, of  
19 course, as I said at the beginning, we have about 20 pending  
20 motions just sitting here right now.

21 MR. BRATT: We would -- we can tell by the hour that  
22 and the days, the weekend days, that we sometimes get notices  
23 from the Court, we are well aware everybody here is working  
24 very hard, and we are very grateful for that. But the case  
25 does need to move. I guess the key deadlines that we really

1 have the most dispute about, if I may take a couple minutes to  
2 go through those --

3 THE COURT: Yes, please.

4 MR. BRATT: -- are the CIPA deadlines.

5 So we begin that with our sort of duelling propositions  
6 as to when the defense makes its CIPA 5 notification. We say  
7 it should be on the 18th of this month, and they want to wait  
8 until June 17th. They have had the classified discovery for  
9 months now. We know from their motions to compel that they are  
10 well steeped in it. They spent a lot of time ex-parte with  
11 Your Honor talking about the classified discovery. They have  
12 it. There is no reason that notice should not be filed. And,  
13 you know, the 11th Circuit in Collins called the CIPA Section 5  
14 notice the central document in CIPA. Because that is what  
15 leads to how the case can be presented at trial.

16 So we think a -- and we understand there may be some  
17 other orders from the Court, and there may be some additional  
18 classified discovery, so there may have to be a supplemental  
19 notice at some point, but we need to get moving on the CIPA  
20 Section 5.

21 THE COURT: And could you envision potentially to the  
22 extent some additional evidence becomes -- or is triggered by  
23 the Court's ruling on a motion to compel, for example, again  
24 having not made any of those decisions, of course, then could  
25 you envision a second CIPA Section 5 notice?

1           MR. BRATT: We could envision that. And as we have --  
2 we have been up front with the Court. That also may result in  
3 another round of CIPA Section 4 for us. Obviously, we have to  
4 see what it is that the Court would be ordering and we have to  
5 see what the comfort level is of the equity holders and how  
6 that might be presented. But --

7           THE COURT: On that point with the equity holders, how  
8 does it work, just in practice, when you sort of get permission  
9 to do things or at least you have a dialog? Can you shed some  
10 light on that?

11          MR. BRATT: Sure.

12          In most of these agencies, and particularly NSA, CIA,  
13 they have a litigation division within their general counsel's  
14 office. That is our point of contact with the agencies.  
15 Attorneys in the litigation units or the litigation divisions,  
16 whatever the agency calls it, they're the ones that receive our  
17 requests. They go to the components within the agencies,  
18 advise them of what our requests are. They come back to us  
19 with the positions of the operators, for lack of a better word,  
20 as to their comfort level with materials possibly being shown  
21 in open court, even in a redacted or limited way. And it's a  
22 dialog that we have with them.

23          I know that the defense characterizes that in their  
24 classified reply supplement -- and I'm not going to say  
25 anything classified that, oh, they're the ones who make the



1 decisions; it's far from that. And part of what we -- part of  
2 our discussions and negotiations with them -- and it really is  
3 a negotiation -- is also setting red lines. That if we don't  
4 get the types of rulings that we hope we can get or think we  
5 can get, we may have to pull the plug on some cases.

6 In recent years there was the -- we cited the Rosen  
7 case to you from Judge Ellis. That eventually reached a point  
8 where the pain level for the equity holders was too much; we  
9 had to dismiss it. There was a case involving --

10 THE COURT: That was the case, I think, 3-1/2 years  
11 into litigation ended?

12 MR. BRATT: I don't know if it was quite that long. I  
13 mean, there was an appeal to the 4th Circuit that made it  
14 longer. Judge Ellis is incredibly efficient. I would be a  
15 little bit surprised if it was three years with him, but, yes,  
16 there was a lot of litigation.

17 THE COURT: I think I just mentioned that. I think he  
18 wrote a treatise on that and mentioned --

19 MR. BRATT: Yes.

20 THE COURT: -- mentioned the timeline.

21 MR. BRATT: That -- that very well -- you probably know  
22 more about that than me if you read his -- read an article he  
23 wrote in the treatise.

24 There was the Drake case from the District of Maryland  
25 that involved NSA computer information; that had to be

1 dismissed. Those are the types of discussions that we have  
2 with them.

3 And to follow up on what Mr. Harbach was saying, and at  
4 least what we think the current state of the law is -- or as  
5 the law on the scope of the prosecution team has evolved from  
6 the earlier 5th Circuit cases, now to the 11th Circuit cases,  
7 authority is the lodestar, is the key criterion. And we have  
8 very little authority over the CIA and the NSA. They have a  
9 lot of discretion in what they will or will not let us use.

10 THE COURT: I think if you go back to the 5th Circuit's  
11 case, Antone, in 1979, there is a discussion of pooling  
12 investigative resources. What do you have to say about that?  
13 I know there has been some mention in the papers about  
14 statements made in the civil proceeding with respect to the  
15 interrelationship. Again, arguable between the Special  
16 Counsel's office and the Intelligence Community.

17 MR. BRATT: Well, certainly by the time the Special  
18 Counsel's office was set up, what the Intelligence Community  
19 was doing in looking at the documents and making certain  
20 assessments, we were not part of at all.

21 In terms of -- you know, if you talk about, sort of,  
22 again, in those cases -- and I know to -- in -- in -- you look  
23 at those cases, and usually what they're talking about is the  
24 investigative agency with whom the federal prosecutors are  
25 working very closely. And they're pooling resources.

1           Did we require the CIA and NSA, NGA, et cetera, to  
2   expend resources to respond to our requests? Yes, we did. Did  
3   we pool resources with them in the sense that, oh, you do these  
4   interviews, we will do those interviews, we will all come  
5   together? No, nothing like that happened.

6           THE COURT: Okay. Okay. All right. And let me just  
7   understand just as a factual point -- I know in one of the  
8   letters drafted by the Special Counsel with respect to the  
9   definition of the prosecution team -- and I'm going to get the  
10   exact quote. I just want to understand what it -- what it  
11   means.

12           As I understand it, your review of the prosecution  
13   consists of, quote, the prosecutors of the Special Counsel's  
14   office and law enforcement officers of the Federal Bureau of  
15   Investigation who are working on this case, including members  
16   of the FBI's Washington field office and Miami field division.

17           So I would like to understand what do you mean by  
18   "working on this case," as of when? What's your timeline, so  
19   to speak --

20           MR. BRATT: Sure, sure.

21           THE COURT: -- what you're working right now. Starting  
22   when? Is it the whole Special Counsel's office? It's -- it's  
23   hard to -- it's hard to discern from that definition.

24           MR. BRATT: Sure.

25           When this case first came in -- and I know they have

1     their theory on the referral. But I will say, when the  
2     referral came in, right around that time, in February, the  
3     case -- the matter within the FBI was assigned to the  
4     Washington field office, and a particular squad in the  
5     counterintelligence division of the Washington field office.  
6     Those were the agents. And a couple of them are actually in  
7     the room today. Those are the agents who began going out and  
8     doing the initial round of interviews. And they have been on  
9     the case all the way through now. They would take taskings for  
10    us. We would, even before, in the very early stages of the  
11    case, talk to them about who were the likely people to be  
12    interviewed, who should be interviewed next, et cetera.  
13    Obviously, as the case developed and more evidence came in, we  
14    began working much more closely with them. And --

15           THE COURT: These are still agents in the Washington  
16    field office?

17           MR. BRATT: In the Washington field office, right.

18           THE COURT: Okay.

19           MR. BRATT: There came a point in time around April of  
20    2022, when the agents began doing interviews in the Southern  
21    District of Florida. And at that time, they began working with  
22    some agents in the Miami field office, in particular the  
23    resident agency in West Palm Beach. And those agents, not as  
24    many, but a handful of those agents have been pretty much  
25    involved. They have other responsibilities, but have been

1 involved throughout the investigation, including when the case  
2 was transferred to the Special Counsel.

3 THE COURT: Now, from the date of the referral until  
4 the present, have any agents outside of either of those field  
5 offices had any connection to this case? And I know  
6 that's -- that's broad. But I say that for a reason. Because  
7 you're -- you're narrowing it to two field offices. There is  
8 some argument about folks at headquarters potentially being  
9 involved, and I think it's important to get clarity.

10 MR. BRATT: Sure.

11 So at headquarters, this was in a section of the  
12 counterintelligence division, there was an assistant section  
13 chief who was sort of the point of contact there. There was a  
14 unit chief who was the point of contact and was involved and  
15 continued with the Special Counsel to be involved. I mean,  
16 again --

17 THE COURT: So why wouldn't those people, at the very  
18 least, be part of the prosecution team?

19 MR. BRATT: And we were not denying that they are.

20 THE COURT: Oh, okay. That's the nature of my  
21 question.

22 MR. BRATT: Yeah.

23 THE COURT: Because, as framed, it seems the folks who  
24 are, quote, working on this case include -- and maybe there is  
25 more to it, that's just not specified in that definition.

1 That's what I'm trying to probe, is who beyond the two field  
2 offices, from the FBI at least, has, quote, worked on this  
3 case?

4 MR. BRATT: So on a sort of day-to-day level, it was  
5 about two or three people in FBI Headquarters. And we have  
6 produced their materials in discovery.

7 THE COURT: Okay. Now, prior to the referral, were  
8 there any FBI agents or members of the Department of Justice  
9 who were working on the issue of missing boxes  
10 or -- or information that was being requested from NARA?

11 MR. BRATT: Not until close to the time that NARA  
12 formally referred the case to us.

13 THE COURT: Is there anything you wish to add?

14 MR. BRATT: No. I just think Mr. Harbach is correct in  
15 advising me that it's very important to separate what any  
16 connection to the case is from the people who actually were  
17 responsible for carrying out tasks that we gave them.  
18 Your Honor has used the term "working on the case." That is  
19 the definition --

20 THE COURT: Well, that wasn't my term. That was the  
21 term provided by the Special Counsel.

22 MR. BRATT: And that is what we mean by that, the  
23 people that were working --

24 THE COURT: I'm just trying to figure out, what does  
25 that mean? What does it mean to be working on a case versus

1 being consulted or being part of the discussion? And so those  
2 things are a little bit vague. But in any case, I do want to  
3 stay focused on the scheduling issues. If you want to add any  
4 more about that, then I want to hear from the defense  
5 attorneys.

6 MR. BRATT: Let me go through the CIPA issues that we  
7 have. So one, CIPA -- CIPA Section 5 notice in -- in June is  
8 way too late.

9 Second, the defense has something that they call  
10 a -- having the government file a response to their CIPA  
11 Section 5 notice. Well, a response to the CIPA Section 5  
12 notice is a 6A motion. There is no such thing as some general  
13 response. Because then they also, on July 9th, want to have a  
14 hearing on the sufficiency of the CIPA 5 notice. And that  
15 also --

16 THE COURT: All right. I'm sorry. I want to make sure  
17 I know where you are. So you're looking at page 5 of docket  
18 357?

19 MR. BRATT: I think so. We kind of --

20 THE COURT: The chart.

21 MR. BRATT: Yes.

22 THE COURT: The defense proposal.

23 So the deadline that you say is sort of a non- -- a  
24 non-deadline is which one?

25 MR. BRATT: There are two non-deadlines. The first is

1 the June 24th, government filing a CIPA 5 notice. That is  
2 nowhere in CIPA.

3 THE COURT: Okay.

4 MR. BRATT: And then a July 9th hearing on the  
5 sufficiency of the CIPA 5 notice. And as a legal matter,  
6 that -- their notice should be sufficient. We shouldn't be  
7 having to litigate it. The 11th Circuit is actually clearer  
8 than a lot of circuits in saying their descriptions of the  
9 classified information they seek to reveal needs to be  
10 particularized -- particularized.

11 THE COURT: So you don't really know what that means?  
12 I don't -- hearing evidentiary, as necessary, on sufficiency of  
13 CIPA Section 5 notice.

14 MR. BRATT: It's not a thing. It doesn't exist in  
15 CIPA. The expectations should be -- is that they will comply  
16 with CIPA 5's requirements.

17 THE COURT: Okay. So, Defense Counsel, please be  
18 prepared to address these two issues, the June 24th proposed  
19 government response to CIPA Section 5 notice and the July 9th  
20 allotment for a hearing on the sufficiency of the CIPA 5  
21 notice.

22 MR. BRATT: All right. Then under their schedule, they  
23 give us just two weeks after getting the CIPA 5 notice to file  
24 our CIPA 6A motion.

25 THE COURT: How much time would you like?



1 MR. BRATT: We -- in our proposal we ask for four  
2 weeks. Because we will likely -- well, we have to go to the  
3 equity holders and we will likely be filing -- we can reassert  
4 or assert anew the classified information privilege in 6A. So  
5 we're going to have to get declarations for that.

6 THE COURT: So you are asking for four weeks between  
7 the Section 5 notice --

8 MR. BRATT: And our 6A motion.

9 THE COURT: Okay. Gotcha.

10 MR. BRATT: And just also, when they described the 6A  
11 motion, they say it deals with the silent witness rule and how  
12 evidence is handled in the courtroom. Silent witness rule  
13 being a means of showing the jury and the Court the full  
14 classified -- or a version of the classified, the public seeing  
15 a more redacted version of the classified evidence.

16 But, yes, procedurally, the silent witness rule is  
17 worked out throughout the Section 6 proceedings, but the key  
18 thing for Section 6 is the Court ultimately ruling on the  
19 admissibility of the classified information they seek to  
20 disclose. So it's more to it than as they describe in their  
21 notice.

22 Then the other deficiency that we see with  
23 their -- with their proposal is that they have a CIPA 6A  
24 hearing from between June 23rd to the 26th. I think we had it  
25 for two days, but, again, it will take probably a couple of

1 days to do the 6A hearing.

2 THE COURT: I'm sorry. Say that one more time with the  
3 dates.

4 MR. BRATT: Yes. July -- I'm sorry -- July 23rd  
5 through July 26th.

6 THE COURT: Okay. So what would you like to alert me  
7 about that?

8 MR. BRATT: So what I want to alert you to is that they  
9 then have our 6C motion due on July 31st, so possibly five days  
10 later. The reason that's an impossibility -- well, it puts  
11 pressure not only on us, but also on the Court. Because we  
12 cannot file a CIPA 6C motion until the Court has made its  
13 written rulings on -- on the admissibility of the classified  
14 information.

15 In our -- in our -- what we submitted over the summer  
16 on our motion to continue, we had it 14 days from when the  
17 Court issued its order. In our proposal here, we have about  
18 three weeks between the CIPA 6A and our 6C motion --

19 THE COURT: So it should be key to the Court's  
20 ruling --

21 MR. BRATT: Correct.

22 THE COURT: Okay.

23 MR. BRATT: And then last, they have the CIPA 6C  
24 hearing actually occurring after voir dire. And the CIPA 6C  
25 hearing has to occur before the jury is -- is questioned and

1 before it's sworn in. We need to know what the evidence is  
2 actually going to look like. That affects, again, the risk  
3 tolerance of the equity holders and it also affects --

4 THE COURT: Wait. Can we back up for just a minute?

5 MR. BRATT: Sure.

6 THE COURT: You are saying that -- you're saying they  
7 want to do a classified hearing after voir dire?

8 MR. BRATT: Yes.

9 THE COURT: I see August 5th as the proposed final  
10 hearing on remaining CIPA issues, and then voir dire  
11 commencing, at least according to the former president's  
12 counsel, on August 12th. I take their proposal to be an  
13 alternative one to be considered, notwithstanding their  
14 introductory point. But, in any event, is there an  
15 inconsistency there between the final CIPA hearing and the voir  
16 dire?

17 MR. BRATT: So a couple of things in their proposal  
18 that weren't entirely clear to us. But to the extent that it  
19 seemed to suggest that there would be more hearings on CIPA 6C  
20 after the jury was empanelled or before it was empanelled but  
21 after voir dire, that cannot happen.

22 THE COURT: All right. That's a fair point. Okay.

23 MR. BRATT: That's all that I have on CIPA. I'm sure  
24 there is some other scheduling things that you will ask defense  
25 about and I will come back on.

1 THE COURT: Okay. Thank you, Mr. Bratt.

2 MR. BLANCHE: Good morning, Your Honor.

3 If it's okay with the Court, we are also going to  
4 divide up argument. Mr. Bove will address the motion to compel  
5 framework and be prepared to address and respond to questions  
6 that were just raised to the Special Counsel around the motion  
7 to compel, and also potentially some of the CIPA questions that  
8 came up at the end. But I will address scheduling.

9 Look, to be clear, and it's in our papers, we very much  
10 continue to believe that a trial that takes place before the  
11 election is a mistake and should not happen, and there is a lot  
12 of reasons for that that may be obvious. But as they relate to  
13 Your Honor in this courtroom, we very much think that it is  
14 completely wrong and unfair to the American people and to  
15 President Trump that he is going to spend whatever six weeks  
16 the Court decides to hold trial, whether it's closer to the  
17 government's proposal or closer to our proposal, sitting in  
18 this courtroom and not out campaigning for the presidency of  
19 the United States. And --

20 THE COURT: What's your understanding right now about  
21 the proposed length of a trial in this case?

22 MR. BLANCHE: Pardon me.

23 THE COURT: What is your understanding right now of how  
24 long it would take to try this case?

25 MR. BLANCHE: Our understanding is around -- and the

1 Special Counsel can correct -- we believe it will be four to  
2 five weeks, and that's not including jury selection. But it's  
3 also not including the motions we're talking about and the  
4 evidentiary hearings which we think are for sure more than just  
5 a single day.

6 So you're talking about taking President Trump off the  
7 campaign trail for huge blocks of time for really no reason.  
8 The difference between -- we are going to get into the schedule  
9 in a moment, Your Honor, but there is a lot of work to do under  
10 any of these proposals, even -- even counsel for Mr. Nauta's  
11 proposal starting in September, we are working full-time all  
12 summer to get there. And the reason why, as an alternative, we  
13 offered August is because once you get to September, we're  
14 literally -- the campaign is in full swing. It really is in  
15 full swing the whole summer, but it becomes more damaging and  
16 more harmful to the American people and to President Trump  
17 every day that gets closer.

18 Now, we're going to talk about -- in a minute about how  
19 the July date is completely unworkable just from a case-related  
20 standpoint. But the easy solution here is the one that we  
21 asked for in our papers, which is to start this trial after the  
22 election. I think if there were no election, the way  
23 this -- the case -- this case would be -- we still wouldn't be  
24 ready for trial until close to the November time frame. If we  
25 really -- if we really sit back and think about all the

1 decisions the Court will have to make based upon the pretrial  
2 motions, the evidentiary hearings, and the CIPA litigation,  
3 we're working ourselves into almost a frenzy, even under  
4 President Trump's proposed schedule, with all of the things  
5 that have to take place in advance of a trial, and a reason for  
6 doing so, aside from what we have argued repeatedly, is this  
7 administration's desire to get him on trial before the  
8 election. Beyond that, there is no reason. There is no reason  
9 this trial can't start late November, which gives us -- the  
10 Court, the government, and the defense plenty of time to do all  
11 the things we're talking about.

12           So without a doubt, that is our position. It always  
13 has been and it remains that way. Granularly, the big issues  
14 and the problems with the Special Counsel's July date is the  
15 fact that President Trump -- that President Trump is going to  
16 be on trial in New York between March 25th and, at some point,  
17 early to mid May. That's practically an impossibility for the  
18 defendant, for President Trump, to be able to effectively  
19 prepare for this trial while he's on trial there.

20           Now, the Special Counsel has repeatedly suggested that  
21 it's kind of on him and on his counsel that we have these  
22 conflicting trials. That is not 11th Circuit law.  
23 11th Circuit law, there is plenty of law that addresses this  
24 issue and shouldn't need to be -- to be emphasized. But there  
25 is plenty of 11th Circuit law that talks about the -- a

1 defendant's Sixth Amendment right to counsel of his choosing,  
2 including the fact that acting because of some sort of calendar  
3 control shouldn't interfere unreasonably with a client's right  
4 to be represented by the attorney he has selected.

5 President Trump and myself have been wide open and  
6 honest with every court we're in front of about the schedules.  
7 This is not a game where we're trying to put off schedules and  
8 dates because of -- to play courts off of each other, like some  
9 have said. It's a reality. We have a trial that starts  
10 March 25th. The people in New York in the beginning -- a year  
11 ago, about, said that the trial would last approximately three  
12 to four weeks, actually two to three weeks. They have now said  
13 it's recognized it's going to be longer. So even when --

14 THE COURT: What's the current estimate for that trial?

15 MR. BLANCHE: Including jury selection, approximately  
16 six weeks. There is some speculation there because of jury  
17 selection, of course. But that's different than even what we  
18 said to Your Honor last summer because it's just grown longer.  
19 So, you know, when I read the government's --

20 THE COURT: Understanding that constraint, and I  
21 understand that, isn't there at least some work that can be  
22 done within that six-week period?

23 MR. BLANCHE: Oh, absolutely. And our proposal has a  
24 lot of work getting done, just not -- not the work that the  
25 Special Counsel expects counsel for President Trump and

1 President Trump to do.

2 So they suggest a hearing on April 3rd, and they  
3 obviously know that Wednesday is the calendar day in New York.  
4 But just -- think about what that means. That means that  
5 President Trump is on -- in a jury trial all day Monday, all  
6 day Tuesday in New York. He has to end up at home on Tuesday  
7 night, come to this courtroom, in Special Counsel's view, to  
8 argue over a dozen motions, then get back to his home, fly back  
9 to New York to have a jury trial the next day.

10 I don't -- that doesn't even -- I don't know how they  
11 say it with a straight face. That's completely unfair. There  
12 will be no precedent for that type of ask by a government  
13 that's really just trying to do justice. And it just  
14 doesn't -- doesn't work. We have a schedule that puts a lot of  
15 work in before that March 25th date kicks in for President  
16 Trump, including the motions to compel, which Mr. Bove will  
17 address why that is so significant. Depending on the Court's  
18 rulings on the various motions to compel, especially the scope  
19 of the prosecution team, there will be a tremendous amount of  
20 work to be done in producing any discovery that's ordered to be  
21 produced or in the Court's deciding motions that we believe can  
22 be argued in advance of March 25th. So that's --

23 THE COURT: So let's just focus in on the immediate  
24 future in the next 30 to 45 days. In your view -- I think I  
25 asked Mr. Bratt a similar question -- what are, sort of, the



1 key priority items to get through first sequentially and  
2 logically?

3 MR. BLANCHE: We believe that there could be fully  
4 briefed motions on some of the 12(b) -- 12(b) issues, including  
5 selective and vindictive prosecutions. We think that is  
6 extraordinarily important. And we think there is a lot of  
7 evidence that the Court will hear about in argument and in a  
8 hearing, if ordered, that will -- that will cause a lot of -- a  
9 lot of work will need to be done when the Court rules on that.  
10 We think that can be -- can be done.

11 We think there can be an oral argument on the -- on the  
12 Presidential Records Act and the vagueness challenges to --

13 THE COURT: Can you explain to me a little bit -- I saw  
14 that as a hearing to be held before your motion to compel  
15 hearing. I saw that and I was wondering if you could explain  
16 the rationale behind selecting that sequence.

17 MR. BLANCHE: Of course. We believe that putting aside  
18 the Supreme Court's immunity argument for a moment, which is  
19 why we think that should be put off until the Supreme Court  
20 rules. The PRA issue and the vagueness challenges on the 793  
21 will be fully briefed and may not require much of a hearing.  
22 We haven't seen the response on the PRA argument. So, for  
23 example, if the government argues that President Trump was not  
24 president when he took the boxes on the plane on the date that  
25 they allege, we might need to have a hearing to prove that he

1 was. I don't expect that would be a complicated hearing. So  
2 there might be some evidence the Court needs to take in, which  
3 is why we said a hearing may be necessary.

4 But that's really, in our view, argument, and then a  
5 decision -- a decision by the Court. So we think that can get  
6 done before -- that argument can get done before the March 25th  
7 trial starts. And then the motion to compel, which Mr. Bove  
8 can address more weeds on that.

9 We can have a hearing. We are prepared to have a  
10 one- -- we built in two days of hearings, if necessary.  
11 That -- that gets a lot of work on everybody while President  
12 Trump is on trial in New York. And so we're not suggesting we  
13 sit by.

14 And, look, I think there is some built-in -- in the  
15 government's proposed schedule, for example, requiring expert  
16 disclosures by March 18th, when there is -- on the defense,  
17 when the Court hasn't ruled on, we think, significant issues  
18 that will counsel whether we have expert disclosure --

19 THE COURT: Can you be a little more specific with  
20 that?

21 MR. BLANCHE: Sure.

22 So in this case the nature of the classified documents  
23 and whether they're closely held, that -- that issue, and how  
24 we might want to bring that to the jury's attention could  
25 include expert testimony. But whether we decide to do that

1 depends significantly on the rulings.

2 THE COURT: That's what I'm trying to understand. Why  
3 do you need a court ruling to do a -- to do an expert notice?

4 MR. BLANCHE: Well, because we don't know what the  
5 Court is --

6 THE COURT: So what do you need to know in order to  
7 make that decision? Because it's not the subject of the  
8 pending motion; correct?

9 MR. BLANCHE: Correct.

10 THE COURT: Okay.

11 MR. BLANCHE: That's correct.

12 Look, I think we need to understand -- if the Court  
13 agrees with President Trump, and orders a disclosure of what we  
14 think we're entitled to around all the background information  
15 around the various charged documents and their sourcing and the  
16 reason why they were classified at the level they were, and  
17 the -- the reason why the government claims they are so closely  
18 held in an NDI. Until we know whether we're going to get all  
19 the information, we -- we -- we're in a box about whether we  
20 need to call an expert on that issue. So that's the reason why  
21 we don't think there is -- that that should be something that  
22 we're just -- we're forced to decide now.

23 But more granularly on the CIPA side -- and Mr. Bove  
24 can certainly elaborate here -- but they have us -- they have  
25 6A litigation taking place while we're on trial in New York.

1 And I say myself and Mr. Bove, who is a CIPA expert, we have to  
2 do all of that work in a secure facility in this district. And  
3 they know that. And they know we're on trial.

4 So the idea that we would go through -- I will talk  
5 about our Section 5 notice in a moment -- but that we would  
6 provide Section 5 notice and then litigate the 6A while we're  
7 on trial in New York, it's -- I'm not -- I mean, I hate to use  
8 the word "unfair" because we're working hard and we're doing  
9 what we have to do, but how can they even suggest that to the  
10 Court? President Trump has a right to be part of that.

11 So when are we in the secure facility in this district  
12 when we're on trial four days a week? It just -- I think  
13 it's -- it borders on bad faith that they would suggest that.  
14 And our schedule on the 6A litigation, it's true that --  
15 Mr. Bratt is correct that there is -- we are really putting a  
16 lot on the Court and on the parties to hit an August date, but  
17 it still is much more realistic to give President Trump and  
18 counsel an opportunity to get ready.

19 And, by the way, if the trial is scheduled when we  
20 think it should be, there is plenty of time. And we asked for  
21 four days for 6A. Your Honor, we went through Section 4  
22 briefing the last several months. Section 6A is, for sure,  
23 going to be as much or even more complicated for the Court and  
24 the parties. So they -- the government suggests just two days?  
25 That's also completely unrealistic, given the volume of

1     classified materials and what they already know we're going to  
2     be objecting to.

3             So -- so there is a lot built into our schedule that  
4     Mr. Bratt criticized, and I accept that, because it does really  
5     put a lot of work on us in July, but the alternative that they  
6     suggest is not only unworkable because of the physical presence  
7     of counsel not being in the district, nor the defendant, but it  
8     also isn't enough time to get done what we need to get done.

9             So -- and, by the way, the Section 5, the reason -- I  
10    accept Mr. Bratt's position that there is no -- there is no  
11    reply. I mean, the Special Counsel filed a motion to strike  
12    our Section 5 notice. The same Special Counsel -- he is in  
13    this courtroom -- is on the case in the D.C. case. It's not in  
14    your case, Your Honor, but in the case in D.C., we filed a  
15    Section 5 notice. They filed a motion to strike it. So we --

16            THE COURT: Oh, so that's what you mean by government  
17    response to CIPA Section 4?

18            MR. BLANCHE: We were just as shocked there as  
19    Jay Bratt was here on why we put it in our calendar. But  
20    that's what they did. So we were giving them an opportunity to  
21    make a similar argument here, should they choose to do so.  
22    That's the only reason why we included that.

23            THE COURT: So just so I understand, that was a -- that  
24    was a government motion to strike the CIPA --

25            MR. BLANCHE: By the Special Counsel, correct.

1 THE COURT: Okay. What do you have to say, though,  
2 about the other one? The hearing, evidentiary as necessary, on  
3 sufficiency of CIPA 5 notice?

4 MR. BLANCHE: Well, because -- I don't want to get  
5 into -- the reasoning that they gave that our notice in D.C.  
6 should be struck had to be -- was based upon the sufficiency of  
7 our notice. So if they're going to engage in this argument --

8 THE COURT: Oh, okay. So that's tied together.

9 MR. BLANCHE: Totally. If there --

10 THE COURT: I understand.

11 MR. BLANCHE: We agree it was not the usual path.

12 And --

13 THE COURT: Do you disagree with Mr. Bratt's  
14 explanation that there needs to be at least four weeks between  
15 the defense Section 5 and the 6A hearings?

16 MR. BLANCHE: I leave that to Mr. -- that's work that  
17 the Special Counsel has to do. You know, I think he described  
18 the work that that would -- I have no basis to challenge what  
19 he is saying, but I certainly challenge the schedule that he  
20 suggests, that we should do that in the middle of a trial in  
21 New York when we can't be in this district.

22 THE COURT: Do you also agree with Mr. Bratt that there  
23 should be no CIPA hearings conducted after voir dire commences?

24 MR. BLANCHE: I mean, absolutely not. It just depends.  
25 I mean, Mr. Bratt -- I think there might have been a

1     misunderstanding because some of the scheduled hearings were  
2     because of different proposed dates with us and Mr. Nauta. But  
3     there are times when, even after voir dire, classified issues  
4     come up and you have to deal with them, whether it's a late  
5     production by the government. And so -- or something like  
6     that.

7             So to suggest there will be no further classified  
8     litigation after voir dire, no, we do not agree with that.

9             THE COURT: Okay. As far as the schedule in New York,  
10    do you have any sense for just whether the Court will be in  
11    session every day?

12            MR. BLANCHE: Yes. So the Court will be in session  
13    every day with the exception of Wednesday. There are some  
14    potential holidays, including the Jewish holidays in April,  
15    where there is potential that the Court may be canceled, but  
16    there is nothing set in stone. I think it depends on the jury,  
17    and it depends on factors that we don't know yet. But --

18            THE COURT: Is there any sense right now, any filing,  
19    any argument, anything before the New York judge with respect  
20    to a continuance of that March -- late March trial start date?

21            MR. BLANCHE: I would be -- we are going to ask for  
22    more time every time we're in front of that judge. So we  
23    are -- we are not aware of any -- we are not aware of anything  
24    right now other than what has already publicly been argued by  
25    us, that we need more time, given what the Court did in that

1 case with respect to the D.C. trial. And, you know, well --  
2 so, no, we don't have any reason to believe, but I don't want  
3 to represent anything other than, to this Court, than we are  
4 most certainly in a position where we want more time, and --  
5 but to this point, Judge Merchan has denied our application.

6 THE COURT: Okay.

7 MR. BLANCHE: And I say that -- there is some meat on  
8 that. And we know that the -- the juror -- the jury pool and  
9 whatnot have already -- they've already started the process of  
10 planning on a jury coming in on the 25th.

11 THE COURT: So as far as you're aware right now, that  
12 is a firm date.

13 MR. BLANCHE: Absolutely -- 100 percent, yes,  
14 Your Honor.

15 THE COURT: All right. Anything else on, sort of, big  
16 picture scheduling?

17 MR. BLANCHE: No, Your Honor. Just, I'm happy to  
18 answer any questions that come up in response to what I have  
19 said now. I would just say again that I think maybe it was  
20 lost in our submission because of all of the dates we put in  
21 between now and mid August. We did that to answer the Court's  
22 direction. We think the calendar is -- is much more  
23 appropriate and easier to fill if the Court schedules this  
24 trial after -- after the election, and certainly object to a  
25 trial in -- I mean, at the risk of saying the obvious, any



1 later [sic] than what we proposed. Because it just  
2 comes -- it's just completely unfair to President Trump, to,  
3 you know -- who, for all intents and purposes, is a -- the  
4 Republican nominee for president of the United States.

5 THE COURT: All right. Thank you.

6 Let me hear now from any other defense attorney who  
7 wishes to be heard on the issues of scheduling. Then we will  
8 shift to the motion to compel discussion. I may need to hear  
9 again from the government on that topic. Then, hopefully, we  
10 are still on track for our recess and then legal argument in  
11 the afternoon.

12 MR. WOODWARD: Thank you, Your Honor.

13 I want to touch upon a couple of issues that are unique  
14 to Mr. Nauta with respect to scheduling. I think probably the  
15 best place to start is the status of discovery in this case  
16 because from our perspective, we're not -- we're not finished  
17 with discovery. We are going to talk about motions to compel  
18 separately. We appreciate that the Special Counsel's position  
19 is that we don't have any standing in discovery, but the  
20 reality is that regardless of how the Court rules on those  
21 motions to compel, discovery continues to come forward in this  
22 case. And as we indicated in our filing this morning, we  
23 learned just yesterday that there is a search warrant that  
24 hasn't been provided to us yet. Now --

25 THE COURT: That's a search warrant for what, as far as

1     you're aware?

2                 MR. WOODWARD: It's a search warrant, as I understand  
3     it, for Mr. Nauta's iCloud account. And so what happens, if  
4     you use an iPhone with an iCloud backup feature, is that your  
5     iPhone is constantly backing up to the cloud. And so what the  
6     FBI can do, even in the absence of having the physical device,  
7     is they can get and execute a search warrant on Apple for the  
8     backup of that phone that is stored in the cloud.

9                 Now, there is some data that is only stored on your  
10    phone, typically that's going to be pictures, but there is  
11    quite a bit of data that is both stored on your phone and in  
12    the cloud. If you lose your phone, as many of us have done, I  
13    have done multiple times, you get a new phone, you put in your  
14    information and you download that backup and it looks exactly  
15    as it did the day before. And so that's not an uncommon means  
16    that the FBI utilizes to collect data.

17                Now, to be sure, we have the data that they collected,  
18    but we don't have the warrant. Now, I don't suggest that  
19    that --

20                THE COURT: Do you have the application in support of  
21    the warrant?

22                MR. WOODWARD: We do not. What the Special Counsel's  
23    office made me aware of is that there is a public version of  
24    the application in support of the warrant that is available. I  
25    was not previously aware that the Press Coalition had been

1 litigating the publication of Mr. Nauta's warrants.

2 THE COURT: Could you have been aware?

3 MR. WOODWARD: I suppose I could have been following  
4 every matter that was docketed in this district to see which  
5 ones involved Mr. Nauta. But certainly nobody from the Special  
6 Counsel's office nor the Press Coalition asked for our position  
7 on what should be public and not public with respect to  
8 his -- the applications for search warrants of his devices.

9 I don't know that there was any legal obligation for  
10 them to do so. It would seem, as a matter of courtesy, that  
11 somebody in the Justice Department would let us know. But, no,  
12 we had no idea that there was all this litigation happening in  
13 the Southern District about the applications that involved,  
14 you know, specific details of Mr. Nauta's life that are being  
15 published on the docket.

16 THE COURT: And you just learned that yesterday.

17 MR. WOODWARD: No. The first time I learned that was  
18 in a meet and confer -- I can't recall whether it was Monday or  
19 Tuesday or last Friday -- in which the Special Counsel asked  
20 our position -- as the Court is aware, one of the motions we  
21 filed was a motion to suppress the result or the -- the  
22 material that was obtained through the execution of warrants on  
23 Mr. Nauta's devices. We attached those motions to -- we  
24 attached those warrants and the applications, therefore, to our  
25 motion. And the Special Counsel's ask of us was: Would you

1 all be willing to simply refer to the public facing versions of  
2 those applications? And my response was I had no idea that  
3 they existed.

4 So that was -- I can't recall when that meet and confer  
5 was, Your Honor. I think it was Monday afternoon.

6 THE COURT: Within -- fairly recently.

7 MR. WOODWARD: Yes, Your Honor. Yes.

8 THE COURT: Okay. So I guess your point, though,  
9 broadly speaking on discovery, because there was additional  
10 time afforded in the scheduling order for defense counsel to  
11 review both unclassified and classified discovery is what?

12 MR. WOODWARD: We're not finished with discovery yet.  
13 And so we're setting --

14 THE COURT: Can you provide more specificity? Because  
15 I understand it's not out of the ordinary for the government to  
16 provide additional discovery within reason in anticipation of a  
17 trial date as it becomes available to them. And so, in your  
18 view, is what's happening now somehow out of the ordinary with  
19 respect to these continuous transmissions of discovery? How is  
20 it that discovery in your mind is becoming, from what I am  
21 hearing, not done?

22 MR. WOODWARD: Oh, not at all out of the ordinary. I  
23 mean, I think in any normal case Your Honor certainly  
24 appreciates that as the government becomes aware of additional  
25 discovery, they make it available to defense counsel. What is

1 out of the ordinary is the -- a truncated approach that the  
2 Special Counsel is seeking in this case.

3 Let's transition to the CIPA 5 discussion that we have  
4 had this morning. In CIPA 5, we are tasked with advising  
5 Your Honor of every classified document or classified  
6 information that we intend to rely on at trial. And the  
7 Special Counsel, we know, wants to hold us to that disclosure.  
8 And so in less than a month's time the Special Counsel would  
9 like us to tell you exactly which classified information or  
10 classified documents we intend to rely on in defense of  
11 Mr. Nauta.

12 THE COURT: Why is that untenable?

13 MR. WOODWARD: The problem we have, Your Honor, is  
14 threefold. First, Your Honor ruled, I believe this week, that  
15 Mr. Nauta himself would not have access to that classified  
16 information. So be it. But the Special Counsel made two  
17 concessions in their application which Your Honor unsealed  
18 earlier this week; that would be ECF Number 349. The first  
19 concession they make is that Mr. Nauta will have access to any  
20 classified markings that were in the boxes of documents. Well,  
21 we don't have that; right? I suppose they propose to redact  
22 the documents of all material or all content except the  
23 classified markings? We don't have that yet. I mean, that is  
24 discovery in this case. Mr. Nauta cannot --

25 THE COURT: So what are you talking about? The face

1 sheet of the document where it says "top secret" or whatever it  
2 says?

3 MR. WOODWARD: Oh, I expect that what they're going to  
4 do -- and they can correct me on this -- but if there is a  
5 document bearing the classified marking, a document that he is  
6 alleged to have conspired to conceal, then they're going to  
7 redact the classified information from that document and  
8 Mr. Nauta gets everything but the classified information.

9 So, to be sure, not every document that was in a box  
10 has a classified face sheet. In fact, I think the vast  
11 majority of those documents do not. What they have are  
12 classification markings. And what the Special Counsel advises  
13 the Court is, that's all that Mr. Nauta is entitled to see,  
14 that's all that is material to Mr. Nauta's defense.

15 Now, we disagree with that and we're not here to  
16 litigate that or relitigate that, but he -- they can see he  
17 gets access to that, and he doesn't have it yet; right? Now  
18 what they will probably tell you is that I am a sophisticated  
19 counsel and I'm perfectly capable of describing to my client --  
20 describing to my client what those classification markings look  
21 like.

22 In their previously sealed and ex-parte submission,  
23 they say that the documents in question are identified in the  
24 indictment itself, that I can go and I can look at those 32  
25 classification markings that are identified in the indictment

1 and I can discuss that with Mr. Nauta. But that divorces what  
2 is really happening here from a legal concept. What is really  
3 happening here is that we have boxes full of documents, some of  
4 which allegedly bear classification markings and that  
5 apparently Mr. Nauta was supposed to have been privy to because  
6 he was hiding those boxes or concealing those boxes from either  
7 President Trump's counsel or from the FBI or from the grand  
8 jury. And it doesn't matter, the Special Counsel would say,  
9 what the content of the document was; all that matters is that  
10 they had a classification marking.

11 THE COURT: Okay.

12 MR. WOODWARD: But I need to be able to review with  
13 Mr. Nauta the contents of those boxes so that I can understand.

14 THE COURT: Do you mean the contents of the markings?

15 MR. WOODWARD: I need to know the content of the boxes.  
16 So there is a box that --

17 THE COURT: But those have been available for some  
18 time, have they not?

19 MR. WOODWARD: Except they don't have the documents  
20 with the classification markings.

21 THE COURT: So what is it that you at this point don't  
22 have that you believe you are entitled to consistent with the  
23 Court's Section 4 order?

24 MR. WOODWARD: Consistent with the Court's Section 4  
25 order, the government is going to -- is -- agrees that

1 Mr. Nauta may receive -- may review the classification  
2 markings, so the documents with classification markings, but  
3 not the classified material on those documents.

4 Now, I suspect --

5 THE COURT: And how would this -- so I -- conceivably,  
6 you would have an entirely redacted document with a marking on  
7 the bottom right, let's say, and so -- help me understand why  
8 it is that that is -- is important to your consultations,  
9 without revealing any attorney-client privilege, of course.

10 MR. WOODWARD: I will answer that in two ways. First  
11 of all, if it's discovery, it's important; right? I don't  
12 think that we're in the business of parsing out which discovery  
13 is important to Mr. Nauta and which is not. That's not what  
14 Rule 16 or Brady contemplate. And so they've said he is  
15 entitled to it. We don't have it. And so that's problematic.

16 Second of all, what the government is going to have to  
17 prove at trial, and there is a debate about this, but that  
18 Mr. Nauta understood that the boxes he was moving contained  
19 classified information which is why he was moving them. And  
20 the only way for him to have known that is, A, for the  
21 government to prove that someone told him that, but there is no  
22 allegation that that happened; or, B, that he was aware of the  
23 classification markings. In fact, the indictment makes hay of  
24 the fact that there is a spill box with a document that bears a  
25 classification marking.



1           Now, I've looked at that document as closely as I  
2   possibly can. It's -- it's going to be incredibly difficult  
3   for them to convince anyone that Mr. Nauta or anyone else knew  
4   that there was a classified document in that box. But that's  
5   the theory of their case; that there are all these documents,  
6   bearing classification markings --

7           THE COURT: Is that the photograph that I think is in  
8   the indictment?

9           MR. WOODWARD: It is. A redacted version of that  
10   photograph is in the indictment. They redact -- I can't recall  
11   whether they redacted a classification marking or information  
12   that is classified, but that is the photograph that is in -- in  
13   the indictment. And that, in spilling that box and seeing that  
14   document amongst the thousands of pages of papers in that box,  
15   Mr. Nauta must have understood that the boxes contained  
16   classified documents. And then when he moved them, he must  
17   have understood that what he was doing was hiding documents  
18   bearing classification markings.

19           And so what I think I should be permitted to do is sit  
20   with Mr. Nauta and review the contents of those boxes,  
21   including the documents as they existed in the box with the  
22   classification marking, albeit, at this moment in time, with  
23   the classified information redacted from it, so that I can  
24   speak to him about: Mr. Nauta, what did you understand? What  
25   should our defense at trial be? Should we be cross-examining

1 FBI agents on the contents of these boxes? Should you testify  
2 about your understanding of the contents of those boxes?

3 The second concession the Special Counsel makes in  
4 their previously ex-parte submission is that Mr. Nauta will be  
5 entitled to the evidence that is admissible against him at  
6 trial. But we don't know what that is. And that sort of  
7 is -- it sort of brings back to light all of this discussion  
8 about what redactions are going to be necessary. The Special  
9 Counsel has not told us, through Section 6, what the evidence  
10 at trial is going to be. But once we have that information, we  
11 will be in a much better posture to discuss with Mr. Nauta what  
12 we need from the Court vis-à-vis his access to the documents.  
13 If they're simply going to --

14 THE COURT: Are you saying that you think Section 6A  
15 should come before Section 5? I'm a little bit confused.

16 MR. WOODWARD: So one thing I will observe about  
17 Section 5 is that what Section 5 provides -- I understand  
18 Special Counsel wants us to get at Section 5 now. But if you  
19 read the plain language of Section 5, it contemplates a  
20 submission 30 days before trial. The literal language of the  
21 statute says: When the Court orders, or, at the latest,  
22 30 days before trial. There is nothing -- to answer your  
23 question, Your Honor, yes, there is nothing in Section 5 or  
24 Section 6 that specifies the timeline. Now --

25 THE COURT: Right. But it would make logical sense to

1 proceed through CIPA in a sequential way, just like the statute  
2 is organized.

3 MR. WOODWARD: Absolutely. And I'm sure the Special  
4 Counsel will advise you that that is how it is always done.  
5 But we have a unique case in the circumstances. We have a case  
6 in which Mr. Nauta is not permitted to understand the content  
7 of the documents. At this juncture, they're asking us to  
8 identify which documents we want to use at trial now, but only  
9 later are they going to tell us which documents they're going  
10 to use at trial.

11 So I'm tasked with predicting which documents they're  
12 going to use at trial so that I can identify the evidence that  
13 we intend to use --

14 THE COURT: Are you aware of any format that has  
15 permitted, like, a follow-up Section 5, post-disclosure of  
16 government's Section 6? In other words, some mechanism that  
17 would permit the defense to then maybe supplement the  
18 Section 5, having received what they see in the Section 6, if  
19 that makes any sense?

20 MR. WOODWARD: No, not in those precise terms.  
21 Although Section 5 does contemplate supplemental submissions.  
22 My concern here is that the Special Counsel is going to jump  
23 all over that and say they could have and should have  
24 identified records in March that they intended to use at trial.  
25 They've had 5,300 pages or 6,300 pages of discovery now for

1 months and months and months. Why didn't Mr. Woodward identify  
2 Document ABC in his March submission? Now, only after we have  
3 given him our trial exhibits, he is identifying Document ABC;  
4 it's too late.

5 THE COURT: I think that does speak to a broader point  
6 which is, you know, this proceeding, as CIPA hearings I think  
7 broadly go, evolve, and they present issues as they do, and  
8 it's hard to predict with precision exactly what will be  
9 necessary at each of those stages because much depends on court  
10 rulings and physical review of documents. So there needs to be  
11 some -- some space in the schedule to allow for that  
12 flexibility and to allow the Court to have enough time to sort  
13 through those issues. So I do take your point as a fair one on  
14 that basis.

15 Anything else that you want to tell me about discovery  
16 specifically, because that's where you started.

17 MR. WOODWARD: Not that is unrelated to the motions to  
18 compel.

19 THE COURT: Okay.

20 MR. WOODWARD: So we have --

21 THE COURT: And just so I understand, as far as the  
22 proposal that was offered, I see you have a September 9th; is  
23 that correct?

24 MR. WOODWARD: That is -- so, yes. That is, we think,  
25 the soonest that we could possibly be prepared for trial.

1           To be sure, I don't think that we will be ready for  
2   trial. I mean, it is conceivable that Your Honor will deny all  
3   of the 20 motions that are pending as soon as briefing is  
4   complete. But, you know, we -- we think that you will  
5   rightfully take the time to consider those.

6           You know, we -- you know, Mr. Bratt made the offhanded  
7   comment about the fact that I have noted a vacation in the  
8   scheduling order. I don't do that lightly. This is a case of  
9   national importance, but the reality is, is that we are all  
10   people too. I have four young children, 8, 6, 4, and 2. We  
11   made our childcare arrangements this summer around when that  
12   vacation would be. I'm not going to -- I don't --

13           THE COURT: I understand that. And there is a human  
14   element to scheduling always, and I'm well aware of that.  
15   So --

16           MR. WOODWARD: So that's why we did that, Your Honor.

17           We think that, you know, as we have collaborated with  
18   our defense counsel in putting forth hearing dates, we  
19   just -- here we are. I mean, it's -- we have been at this for  
20   82 minutes and we are just talking about scheduling. There are  
21   some really complicated legal questions, some of which  
22   Your Honor will be deciding for the first time. And if this  
23   case is as important as the Special Counsel says, then it  
24   deserves the time and attention for the Court to rule on it in  
25   a reasoned manner. And so even if we lose every motion that

1 we've brought, and in criminal cases you often do, it takes  
2 time to do that. And so we don't think that rushing to  
3 judgment here is appropriate.

4 THE COURT: All right. Thank you.

5 Anything from counsel for Mr. De Oliveira?

6 MR. IRVING: No, Your Honor. Thank you.

7 THE COURT: Okay. Then let me hear from Mr. Bove on  
8 the motion to compel issue, specifically I would like for you  
9 to isolate the particular degree of fact-finding that you think  
10 is necessary, focusing in on the prosecution team question and  
11 helping me better understand sort of the logical sequence for  
12 addressing that motion.

13 MR. BOVE: Yes, Judge. Thank you. Good morning.

14 Just at the outset, the reason that this prosecution  
15 team motion is important is that it has a cascading effect on  
16 the government's discovery obligations for the rest of the  
17 case. And Your Honor referenced case file reviews when you  
18 were talking to Mr. Blanche. And that is the correct frame of  
19 reference. Because when this case started, I wasn't here, but  
20 I have read about it last summer, and the government said we  
21 are going to go above and beyond Jencks. We are certainly  
22 going to comply with Giglio. Brady, no question, obviously  
23 we're going to do that. And we're going to do it promptly,  
24 immediately, day 1.

25 The only reason that they could stand up in court and

1 say that out loud was by defining the prosecution team in a  
2 completely untenable and unlawful way.

3 They -- they have stepped back from those  
4 representations and, really, never defended them since they  
5 said them. But --

6 THE COURT: What do you mean the representation? About  
7 who was working on this case, that definition?

8 MR. BOVE: The representations about compliance with  
9 Jencks on day 1.

10 THE COURT: Oh, okay.

11 MR. BOVE: Because now we understand that, at the very  
12 least, there are outstanding emails from agents they concede  
13 are a part of the prosecution team. And so that -- that is the  
14 reason that we're so focused on that motion. Because  
15 independently of all of the other parts of the motion to  
16 compel -- and I would like to talk about those if we have time  
17 today -- what the government is saying is when it's time for us  
18 to represent that we're in compliance with Jencks, we are going  
19 to say we're compliance with Jencks with respect to the three  
20 FBI agents from the Washington field office.

21 When they call a witness from, for example, NARA,  
22 they're going to say we don't have a Jencks obligation with  
23 respect to that witness; maybe they will turn some things over  
24 voluntarily, but it's not our problem. When they put on a  
25 witness with respect to the NDI element, they're going to say

1 we don't have an obligation to go to the CIA and collect  
2 exculpatory information about whether the classified  
3 information is closely held; they're not a part of the  
4 prosecution team.

5 And so that's why I say this prosecution team motion is  
6 queued up because it impacts the rest of the case.

7 THE COURT: Well, they say you're not entitled to a  
8 hearing on the prosecution team question, that there is no  
9 fact-finding to be done. What is your response to that  
10 argument?

11 MR. BOVE: We have set forth direct -- more than  
12 plausible arguments about the composition of the prosecution  
13 team in this case, ranging from DOJ leadership, to FBI  
14 leadership, to the Intelligence Community, to NARA, and to the  
15 White House. But it's not all talk. We have attached exhibits  
16 to these motions that lay out the factual basis for our theory.  
17 And I think any litigation, Judge, and especially in a criminal  
18 case with the consequences that this one could have, it is  
19 incumbent on the government to do more than submit an unsworn  
20 brief and tell Your Honor to take our word for it. And that's  
21 all they've done.

22 And you have referenced today the litigation relating  
23 to the search warrant in Trump vs. United States and the things  
24 that were said about the Intelligence Community in that  
25 setting. That's one immediate and, I think, obvious part of



1 the factual dispute between the parties about what happened on  
2 the ground that supports President Trump's argument and the  
3 defendants' argument that the IC is a part of the Intelligence  
4 Community. The answer to that is because the government said  
5 so.

6 And they -- they speak vaguely about their  
7 representations in those briefs. But one of those briefs  
8 included a declaration from Assistant Director Kohler of the  
9 FBI on this topic. So it's not even as if this was all talk  
10 from DOJ lawyers defending that search warrant in 2022. This  
11 is evidentiary support from the back table that they're on the  
12 team.

13 THE COURT: Okay. You could appreciate that the  
14 request that you make with respect to how broad, with the many,  
15 many agencies.

16 Taking a functional approach to the prosecution team on  
17 a case-by-case basis, what would be your view about -- about a  
18 prosecution team analysis that is just more tailored to the  
19 actual people that, arguably, again, not knowing the full scope  
20 of evidence, worked on these decisions at -- or at least  
21 extensively collaborated with the Special Counsel and when.

22 MR. BOVE: I think that that is the approach that is  
23 required by the 11th Circuit in the 5th Circuit law that we  
24 have cited. And when we say, for example, that we believe NARA  
25 is a part of the prosecution team, we're not suggesting or

1 intending to suggest that the Special Counsel's office needs to  
2 go search the emails of NARA personnel who did not participate  
3 in the collection of the 15 boxes. But there are some NARA  
4 personnel, including their general counsel, including the  
5 former archivist who absolutely participated. And, yes,  
6 they're a part of the prosecution team. And the government --

7 THE COURT: How do you define just temporally -- when  
8 does the analysis of investigation begin?

9 MR. BOVE: As soon as -- as soon as the agency that  
10 drove the referral contemplated criminal prosecution. And in  
11 this case that is September of 2021 when NARA sent the internal  
12 email that is attached to our unclassified brief at Exhibit 5  
13 that said they had informally contacted DOJ. We have a factual  
14 dispute about the substance of that contact. Our position is  
15 that that contact was the initial outreach that initiated  
16 contemplation of criminal charges, and that that was totally  
17 inappropriate under the standards and practices and history of  
18 that agency, and it was done so in a completely biased and  
19 unlawful way.

20 THE COURT: And you submit that took place in what time  
21 frame?

22 MR. BOVE: It's a September 1st, 2021, email referring  
23 to informal contact with DOJ; that's Exhibit 5 to our  
24 unclassified brief. And so that's our position. There is, at  
25 minimum, a factual dispute. And the government has not

1 explained it. They certainly haven't put forth evidence that  
2 could put different content than we have ascribed to that  
3 email.

4 THE COURT: So if you were to conceive of a hearing in  
5 your view -- again, these are issues for me to assess more  
6 carefully -- how would you envision an evidentiary hearing on  
7 the prosecution team question developing?

8 MR. BOVE: We would offer into evidence at that hearing  
9 the exhibits that we have attached to our brief, and then we  
10 would elicit -- we -- first and foremost, because -- we have  
11 raised colorable issues on the scope of the prosecution team.  
12 It's the government's obligation in this case, it's the  
13 government's ethical obligation to establish that they are in  
14 compliance with their discovery obligations. So at that  
15 hearing the burden is on them. But I would expect that, in  
16 order to meet that burden --

17 THE COURT: At this point have you received any  
18 information that would counter or rebut the allegations or  
19 arguments you make in the motion?

20 MR. BOVE: It's all talk, Judge. It's their brief. I  
21 can write a brief. They can write a brief. Ours has exhibits.  
22 It has exhibits that are contemporaneous with what happened.  
23 And they're not just from the discovery. And I think that's an  
24 important point. We shouldn't have had to, but we did, go to  
25 FOIA releases to dig to find these details that they have

1 hidden from President Trump about how this initiated, and that  
2 it would be a part of our showing at the hearing. But it would  
3 require witness testimony.

4 THE COURT: Quick question on the FOIA stuff.

5 Do you -- I attempted to figure out whether any of the  
6 material that is subject to redaction is coming from the FOIA  
7 documents. I think the answer is no, but do you -- can you  
8 clarify whether -- whether the Special Counsel is seeking  
9 redaction or sealing of any items in the FOIA as far as you can  
10 tell.

11 MR. BOVE: I do not believe that they are seeking  
12 redaction of exhibits that are FOIA released, but they are  
13 seeking redaction of information from other exhibits that is  
14 duplicative of information in FOIA releases such as the names  
15 of NARA personnel who participated in --

16 THE COURT: Well, we will talk about that in the  
17 afternoon session. It does get very detailed.

18 MR. BOVE: Right.

19 THE COURT: Okay. So sticking on the subject of  
20 factual disputes on the prosecution team question, is that  
21 just -- so I understand your request, it would be a hearing on  
22 the prosecution team question, a decision on that issue, and  
23 then, depending upon what you do or do not receive following  
24 case file reviews in accordance with that judicially enforced  
25 definition, then a motion to compel the various topics, if you

1 still have those requests live?

2 MR. BOVE: Our proposal is slightly different, Judge.  
3 We have proposed a two-day hearing on March 13th and 14th to  
4 address the motion -- the motion to compel in its entirety, and  
5 our request for discovery on the selective and vindictive  
6 prosecution issue. And as I'm sure Your Honor can appreciate,  
7 that selective prosecution issue is so important to this case  
8 and to the country, as we stand here with President Trump in  
9 the room in a setting where there are public findings that the  
10 sitting president of the United States engaged in the same  
11 conduct and will not face charges. And so that is why, in our  
12 schedule, our proposed schedule, we front loaded that issue.  
13 Because it's going to take a lot of work to get to the truth of  
14 that and we want it to come out as quickly as possible.

15 And so we proposed a two-day hearing, like I said,  
16 motion to compel and selective prosecution. We think that the  
17 motions to compel raise 22 discrete issues. We are seeking an  
18 evidentiary hearing with respect to five of them. On that list  
19 of five is the prosecution team scope, which I do think is a  
20 threshold question.

21 With respect to the remainder, for which we're not  
22 seeking an evidentiary hearing -- when I say hearing what I  
23 mean is oral argument on legal questions. I'm going to -- I  
24 think it's probably the third time.

25 Our position is that the government has the burden in

1 that hearing of demonstrating that they are in compliance with  
2 their discovery obligations because we made a plausible showing  
3 that they are not.

4 THE COURT: But that's rooted again on the definition  
5 of the prosecution team; correct?

6 MR. BOVE: No, Your Honor. It's -- in part, but it's  
7 also rooted on the material -- materiality standard of  
8 Rule 16(a)(1)(E) and on the government's affirmative search  
9 obligations under Brady. All of those things lead the  
10 government to have the burden of proof at a hearing like that.  
11 And so -- if they don't want to call witnesses at that hearing,  
12 they're not going to meet their burden. We may still want to  
13 call witnesses to get the truth out and to make our points.

14 Here, if I could list out what I think are some of the  
15 key factual disputes --

16 THE COURT: Yes, please, that would be helpful.

17 MR. BOVE: -- about the prosecution team.

18 There is the submissions in Trump vs. United States  
19 that we've talked about, and, from an evidentiary perspective,  
20 the Kohler declaration. There --

21 THE COURT: But those are -- those are a matter of  
22 public records. So what more needs to be done on that?

23 MR. BOVE: What did Mr. Kohler mean by that? Because  
24 what I heard this morning is he didn't mean what he said, so I  
25 think he has got to come here and tell us.

1           What else? What are the -- is the nature of the access  
2   to classified email systems and databases by members of the  
3   Special Counsel's office, which I think has just manifest  
4   relevance to the scope of the prosecution team. And I'm  
5   referring here to Classified Exhibit 7 and Classified Exhibit 8  
6   to our supplement.

7           THE COURT: I think what I have heard today, which was  
8   helpful, was that there is a liaison, I guess a litigation  
9   liaison, and maybe that's really just the point of contact, and  
10   no -- and no additional access.

11          MR. BOVE: On that point, Judge, we have a factual  
12   dispute about the meetings referenced in the classified  
13   briefing that happened -- three meetings in March of 2023,  
14   attached as Exhibits 39, 40, and 16 to our classified  
15   supplement. And if you look at the participants in those  
16   meetings, you will see a cast of characters that sounds very  
17   different than what Mr. Bratt said to you this morning.

18          And there are notes to those reports that they refuse  
19   to provide, there are conversations about strategy for how to  
20   bring these charges in a way that the Intelligence Community is  
21   comfortable with, that bear on prosecution team's scope. And  
22   so we would expect that at that hearing, if they're going to  
23   meet their burden, they're going to call some witnesses to  
24   explain what those reports really mean and how it could  
25   possibly be the case that when you sit down with those agencies

1 and you say, How does this document look? Could we bring a  
2 charge based on this? What would it have to look like to get  
3 you guys comfortable?

4 Mr. Bratt referred to a redline this morning. When  
5 they sit down in the meeting to draw the redlines about how  
6 this case will look, how does that not make them a part of the  
7 prosecution team? We're way past the -- any kind of burden, I  
8 think, of putting forth evidence that suggests fact-finding is  
9 appropriate. We've asked them -- before we filed the motions  
10 we said: Can we at least see the notes to these meetings that  
11 says there is additional details? We would like to better  
12 understand them. Nope, not discoverable. Not happening.  
13 Cannot.

14 Well, now this is where we are, Judge. We're in a  
15 place where the Trump vs. United States filings reflect  
16 extensive coordinating -- coordination, the reports in  
17 discovery reflect that. I just -- I do not think you will get  
18 a straight answer to the question of: What is the significance  
19 of a meeting where the prosecutor consults the Intelligence  
20 Community about whether and to what extent a document can be  
21 used in a criminal prosecution?

22 THE COURT: I think they would say, well, they're  
23 victims and they're -- they're equity holders, but that's it.  
24 They don't conduct any investigation. And they're not acting  
25 as an agent of any kind.



1 MR. BOVE: We've briefed the victims' issue and it  
2 falls apart. But in a meeting where prosecutors sit with  
3 agency personnel and talk about litigation strategy -- and that  
4 is what it is, litigation strategy, about how to use one of  
5 these documents in a prosecution, the agency personnel are much  
6 more than victims and they're much more than, respectfully, the  
7 FBI agents in the room.

8 THE COURT: Okay.

9 MR. BOVE: They are closer to prosecutors, and they're  
10 having prosecutorial input on what the presentation of this  
11 case would look like to the jury. And that makes them --

12 THE COURT: All right. I think because of -- in the  
13 interest of time -- and some of this is sort of getting into  
14 the potential topic for a hearing. So let me just have you run  
15 through the additional factual disputes. I think you said you  
16 had maybe a list. And then I would like to hear from the  
17 Special Counsel on any additional issues related to scheduling  
18 for purposes of the motion to compel.

19 MR. BOVE: So I have talked about the September 1st,  
20 2021, email and -- that references informal contact, NARA's  
21 informal contact to DOJ; their September 15th, 2021, email  
22 correspondence between NARA and the White House counsel.

23 And based on the timing of that outreach and the  
24 content of it, that also raises questions about what are now  
25 the three components, NARA, DOJ, White House counsel,

1 coordinating in a very -- at a very early time, both with  
2 respect to any president who has left office from a NARA  
3 standpoint, and relative to what happened in this case, early  
4 coordination between those three parts of the government. That  
5 email is Unclassified Exhibit 6 that I'm referring to.

6 Moving forward. January 2022, February 2022. We've  
7 provided a number of exhibits, unclassified, the numbers of  
8 Exhibits 14 through 18, about the sequencing of the referral  
9 and the participants in that process. I truly do not  
10 understand how, even today, the government is telling you that  
11 that began in February of 2022 when it is obvious from the face  
12 of the documents that it happened a month before.

13 And the significance of that -- it's relevant to the  
14 prosecution team argument because it's NARA -- as distinct from  
15 NARA-OIG -- NARA coordinating with the prosecutors to drum up a  
16 criminal -- a paper to file with a criminal referral so that  
17 all of this could look nice and tidy when they decided to  
18 publicize it, and they could try and hide behind the NARA-OIG  
19 referral to not let us get at what actually happened in this  
20 case.

21 But it's also relevant, as we've laid out in our  
22 motions, to the Franks suppression issue. It's relevant to the  
23 due process violation under the Supreme Court cases in Cordell  
24 and La Salle. So the issue around this referral, it touches on  
25 a number of motions --

1 THE COURT: Okay. That's okay. Any other factual  
2 disputes?

3 MR. BOVE: Yes, Judge.

4 One of the government's responses to our discovery  
5 letters refers to a classification review process that appears  
6 to have been separate and distinct from the one they've  
7 disclosed in discovery. We've raised this in our classified  
8 briefing. I think that's at Classified Exhibit 21, page 6.  
9 And so I raise that as a factual dispute because the nature of  
10 the classification reviews is critical to the analysis of  
11 whether the IC was a part of the prosecution team. I really  
12 don't think that's a close question, but if they want to  
13 continue to contest it, then they've got to be clear about what  
14 happened during these reviews.

15 What we see from the discovery is a process run through  
16 FBI Headquarters, not the Washington field office, not the  
17 Miami field division, run through FBI Headquarters with the  
18 Office of the Director of National Intelligence tasking  
19 agencies.

20 So they want to talk about authority as the lodestar of  
21 what "prosecution team" means. The FBI and ODNI are sending  
22 out taskings to these agencies. And each time that the  
23 government has sort of fixated on that word "authority" in this  
24 litigation with respect to prosecution team scope, I do wonder  
25 a little bit about whether the FBI agents who are on the

1 prosecution team, whether the -- whether even the FBI director  
2 feels like Jack Smith has authority over him. That falls  
3 apart, Judge. It doesn't make any sense. I'm pretty sure that  
4 the FBI director would say that they collaborate. And they  
5 concede that the FBI is a part of the prosecution team.

6 There is evidence bearing on prosecution team scope  
7 that NARA participated in the classification review process.  
8 This is our classified supplement at page 2, and the exhibit is  
9 Classified Exhibit 5.

10 And then there is a recent -- a more recent development  
11 that we were very surprised by at the last classified hearing.  
12 There is a White House component -- I'm going to speak at a  
13 high level here. There is a White House component that the  
14 government has taken the position is not a part of the  
15 prosecution team. That component was the subject of a memo  
16 that is a part of the classified discovery; that's Classified  
17 Exhibit 31. And the import of that memo is that the component  
18 did not participate in the classified -- the classification  
19 reviews.

20 And so we were very surprised to be sitting in the SCIF  
21 with Your Honor at the second day of the hearing and hear the  
22 Special Counsel's office talk about communicating with that  
23 very same component about classification reviews. And that is  
24 at the -- I'm talking about the February 13th, 2024, hearing,  
25 page 32, line 9 of the transcript, and page 40 at lines 14 and

1 15. And so there is certain -- most certainly a factual  
2 dispute about that component's role in the initial  
3 classification reviews and then whatever they're telling  
4 Your Honor about classification reviews and ex-parte  
5 proceedings today under the Section 4.

6 THE COURT: Okay.

7 MR. BOVE: And so that's a rundown. And it does sort  
8 of break out between their factual disputes requiring evidence  
9 on the unclassified side of this case and on the -- on the IC  
10 side.

11 THE COURT: In terms of the hearing potentially on the  
12 motion to compel prosecution team issue, do you -- how would  
13 you -- seeing as it's going to potentially involve classified  
14 information, what are your thoughts on just scheduling and  
15 format?

16 MR. BOVE: First and foremost, it's their burden if  
17 Your Honor orders a hearing. I do assume, though, that with  
18 respect to the Intelligence Community's role on the prosecution  
19 team, if they were going to contest that in any serious way  
20 with something more than the unsworn briefs and representations  
21 from the podium, that they've brought so far, that that would  
22 have to happen in the SCIF.

23 THE COURT: Okay. All right. Thank you.

24 Let me hear from Special Counsel on the issues for  
25 scheduling as connected to the motion to compel. And then we

1 will, as promised, break for about an hour and shift gears to  
2 hear argument on the sealing/redaction issues.

3 Mr. Harbach or Mr. Bratt.

4 MR. BRATT: So I will address the remaining scheduling  
5 issues, Your Honor. Actually, I forgot one thing.

6 And then, if I may just respond briefly to a couple of  
7 the points that Mr. Blanche and Mr. Woodward made. On the  
8 scheduling issues, just on the unclassified side, one other  
9 thing about the expert notice. They have us filing our  
10 supplemental expert notice before they file their expert  
11 notice? That doesn't seem to make a lot of sense. Because  
12 oftentimes the supplemental notice is responding to something  
13 that is in their notice. They also --

14 THE COURT: Wait. Can you point me specifically to  
15 docket 357 and identify the inconsistency or issue?

16 MR. BRATT: Yes, one moment, Your Honor.

17 On July 8th, they have the government filing, its  
18 Rule 16, supplemental expert disclosures. And they have theirs  
19 on July 15th, I believe. Yes, expert disclosures on July 15th.

20 THE COURT: So what is the issue?

21 MR. BRATT: The issue is usually the supplemental  
22 expert notices are how our expert is going to be responding to  
23 something their expert might be saying. So it is not logical  
24 to have our supplemental come before they file their notice.

25 THE COURT: What if there were another spot for a, kind

1 of, final supplemental expert disclosure on the part of the  
2 government?

3 MR. BRATT: I mean, I guess, you know, we will --

4 THE COURT: Okay.

5 MR. BRATT: I mean, it's possible something could come  
6 up in one of the hearings where we would say, all right, we  
7 need to expand something the experts are going to say. I don't  
8 think so, but --

9 THE COURT: Okay.

10 MR. BRATT: Sure.

11 THE COURT: All right. Any other specific scheduling  
12 issues?

13 MR. BRATT: Yes. The only other one is that they  
14 request that there be supplemental filings on the questionnaire  
15 on July 1st. And, even if we take their August 12th date,  
16 that's within the 10 weeks that the clerk's office would  
17 have -- would need to get questionnaires out. So the  
18 discussions and the -- finalizing the questionnaires is going  
19 to have to come, I think, well before July 1st.

20 THE COURT: I was curious about that. So how did you  
21 come up with that 10-week -- did a member of your staff call  
22 the clerk's office to figure out what the timeline was?

23 MR. BRATT: Your Honor, you may recall in the motion  
24 that we filed to ask for the parties doing the questionnaire,  
25 we cited some of the minute entries and also some orders that

1 other judges in this district had done. And at least a couple  
2 of them say that the judges themselves had checked with the  
3 clerk's office, and the clerk's office had told -- I forget  
4 which other judge it was or judges -- that they need about  
5 10 weeks. It's in our pleading, Your Honor.

6 THE COURT: Okay. All right.

7 Now, I did want to raise -- there has been some  
8 emphasis in the papers on the Justice Department Manual,  
9 Chapter 9, 85.500. I did want to give you an opportunity to  
10 state your view on that. I didn't see it, really, memorialized  
11 in the papers thus far from your end.

12 MR. BRATT: So, Your Honor, we are in full compliance  
13 with the Justice Manual. And we actually did a consult with  
14 the public integrity section which oversees that portion of the  
15 Justice Manual. And that provision does not apply to cases  
16 that have already been charged, that are being litigated. It  
17 doesn't apply to setting a trial date. We are fully in  
18 compliance. We have two former chiefs of the Public Integrity  
19 Section as part of the -- part of Special Counsel's office, and  
20 we are -- would not do something that violated the -- the  
21 Justice Manual.

22 THE COURT: Okay. So just so I understand, that  
23 provision, as you have explained it to me, does not affect  
24 already-indicted matters --

25 MR. BRATT: Correct.



1 THE COURT: -- is that what you are saying?

2 MR. BRATT: The Department can control what we do  
3 before a case is filed and tell us -- they can tell prosecutors  
4 don't file an indictment or don't seek a complaint. It's  
5 called the 60-day rule that really is --

6 THE COURT: But you see that 60-day rule as key to the  
7 date of indictment, not the date of trial?

8 MR. BRATT: It is where we have control of something  
9 and we can bring a new case within whatever period of time  
10 before an election. It does not apply to cases that have  
11 already been charged.

12 THE COURT: Okay. Thank you for explaining that  
13 position.

14 Okay. Anything further on scheduling?

15 MR. BRATT: Not on scheduling, Your Honor.

16 THE COURT: Okay. Then let me hear from Mr. Harbach if  
17 he has any --

18 MR. BRATT: Could I just -- just respond briefly to a  
19 couple of points that --

20 THE COURT: Oh, yes. Sorry. I thought you were taking  
21 the scheduling piece and he was doing more motion to compel  
22 hearing, sort of, argument.

23 MR. BRATT: Right. But there were some things that  
24 both Mr. Blanche and Mr. Woodward said that I would like to  
25 give a response to.

1 THE COURT: Okay, okay.

2 MR. BRATT: One, Mr. Blanche was expressing some shock  
3 over the fact that we wouldn't think -- that we wouldn't know  
4 that we might want to litigate the Section 5. I will just tell  
5 the Court that I saw their notice in the election case, and it  
6 was woefully inadequate. I mean, it sought things that had not  
7 even been produced in discovery. It was noticing things that  
8 were in -- somewhere in the Intelligence Community's realm.  
9 And that's why our colleagues in that case filed their motion  
10 to strike.

11 We have every expectation, knowing, again, Mr. Bove and  
12 his experience, that the Court -- that they would -- in this  
13 case they will file a sufficient -- a sufficient notice. So we  
14 don't expect there to be litigation. We certainly don't want  
15 there to be.

16 With respect to the issue of the search warrant that  
17 Mr. Woodward mentioned -- so there were two iCloud search  
18 warrants. They are virtually identical. We did produce one of  
19 the iCloud search warrants. We -- turned out, there was some  
20 lapse. The second one didn't. But it's now being produced to  
21 him. And he already had the returns from that iCloud warrant.  
22 So it is not -- it's not something that is new information.  
23 It's just -- it's just the affidavit.

24 THE COURT: Oh, okay. So you're saying there were two  
25 warrants for iCloud accounts --

1 MR. BRATT: Correct.

2 THE COURT: -- associated with Mr. Nauta?

3 MR. BRATT: Correct.

4 THE COURT: And the substance of the return has already  
5 been provided to him?

6 MR. BRATT: That is correct, yes.

7 THE COURT: So all that is left is the affidavit?

8 MR. BRATT: Correct.

9 And I won't take any time responding to what we need or  
10 not need to prove about what Mr. Nauta knew was in the boxes.  
11 I think Mr. Harbach covered that very extensively in the last  
12 hearing. But with respect to the boxes -- first of all,  
13 Your Honor's order is just a few days old, but we can work with  
14 Mr. Woodward to -- and Mr. Irving for a way -- for their  
15 clients to see the --

16 THE COURT: The markings.

17 MR. BRATT: -- the markings on the headers and footers  
18 of the documents, yes, we can do that.

19 But the other thing I should also say is, the boxes  
20 have always been available for defense review. That was in our  
21 first discovery letter to all defendants. Now, as I think I  
22 explained, the actual classified documents were pulled out and  
23 are stored elsewhere, but there are markers as to where they're  
24 found. All they need to do is reach out to us and we can  
25 arrange a time for them to view the boxes.

1           Last, Your Honor, you know, both Mr. Blanche and  
2   Mr. Woodward made essentially the same argument, which is that:  
3   Well, August 12th is what we're proposing. September 9th is  
4   what we're proposing. But, really, Your Honor, we're not going  
5   to make that. We're going to be asking for continued  
6   extensions of time, adjournments of the trial date. And  
7   then --

8           THE COURT: Well, I think what he was talking about was  
9   the New York case.

10          MR. BRATT: Again, what I heard, Your Honor --  
11   obviously, you know, I rely -- but they were saying they don't  
12   think they can even get to trial on the dates that they have  
13   proposed.

14          And that then leads to the question: Why did they  
15   propose those dates? Because what it really seems to mean is  
16   that those were fake dates. They were really almost bad faith  
17   dates. That if a trial is set in this case in August or, even  
18   more, in September, and if the mandate returns to the D.C.  
19   case, this case would then stand in the way of it. But their  
20   intention is to try to adjourn this case again. And we just  
21   need to bring this case to trial this summer.

22          THE COURT: All right. There is a lot of business  
23   before the Court; that is, I think, without a doubt  
24   unquestionable based on a glance at the docket and not to  
25   include the many in camera temporarily-filed pretrial motions.

1 So I think that is evident. And a lot of work remains to be  
2 done in the pretrial phase of this case, which, of course,  
3 needs to be done properly and correctly, as I'm sure everybody  
4 in this room would agree.

5 So with that, anything further from the Special Counsel  
6 on issues relating to scheduling/logistics?

7 And, Mr. Blanche, if you have a particular thing you  
8 need to say, then I will give you a chance --

9 MR. BLANCHE: Thank you, Your Honor.

10 THE COURT: -- at the end. But I do want to try to  
11 wrap up at least as close to noon as possible.

12 MR. BRATT: I will turn it over to Mr. Harbach now.

13 THE COURT: Okay.

14 MR. HARBACH: Thank you, Your Honor.

15 I'm going to -- I will try and be brief. I would like  
16 to start where Mr. Bove started. When Your Honor asked him  
17 about the reason for their request for having a hearing on the  
18 scope of the prosecution team, what he said was it would have  
19 cascading implications for the government's discovery  
20 obligations. That was the first thing he said. That would be  
21 true in any case, in any case in which, theoretically, the  
22 government -- the scope of the prosecution team could be  
23 expanded at the outset, of course, it's going to have cascading  
24 obligations. That's not a real reason.

25 Second, he said that there were outstanding materials,

1 in their view, that they haven't received yet or that the  
2 government hasn't produced. That's why there is a motion to  
3 compel pending. And that's why Your Honor is going to have to  
4 resolve those questions. That's not a real reason. I have  
5 told you what we think the real reason is and I won't reiterate  
6 it here.

7 One more thing. Mr. Bove expressed his concern that  
8 when it came time, as we got closer to trial, that the  
9 government might take the position that we don't have to  
10 produce Jencks materials for a certain witness because that  
11 witness's employing agency isn't part of the prosecution team,  
12 or that we don't have a Jencks obligation as to those things.

13 We know exactly what our Jencks obligations are, and we  
14 have complied with them and we will continue to do so. This is  
15 the key point. They don't get to go behind that. They don't  
16 get to. They don't get to go behind those decisions. They  
17 characterize it as: Well, we just have to take the  
18 government's word for it for any representations when it comes  
19 to discovery.

20 But show me the case. They haven't given you one. We  
21 haven't seen one. We have Saab Moran. We have Armstrong.  
22 Show me the case that says they get an evidentiary hearing in  
23 any circumstance about what the scope of the prosecution team  
24 is. We don't think there is such a case. We see no authority  
25 for it, and they certainly haven't cited one.

1           And when you take into account what I have said earlier  
2   today, and won't reiterate, about the real reasons for this,  
3   that's why -- that's why Armstrong is implicated, and that's  
4   why we think this is just an end run about that.

5           To Your Honor's question about -- that you put to  
6   Mr. Bove about, why would a more tailored approach be  
7   appropriate here? Our respectful response to that is, that is  
8   no answer. That is no answer to there being no authority for  
9   having such a hearing in the first place. Even were it  
10   hypothetically limited, as I think maybe Your Honor was  
11   suggesting to, you know, only a couple of agencies or something  
12   like that. There is no authority for the hearing that they  
13   want.

14           THE COURT: So you don't think there are any factual  
15   disputes that are pertinent to deciding the prosecution team  
16   question?

17           MR. HARBACH: I'm going to get to that in just a  
18   second. It may -- it may please you to know that I am -- I  
19   don't have a response for every single one that Mr. Bove made,  
20   but I do want to make a few observations about those. But  
21   before I do that, another thing that came out of Mr. Bove's  
22   mouth was that they have quote -- I think I'm quoting  
23   now -- raised colorable issues. That is nowhere close to the  
24   standard for getting a hearing under the authorities that we've  
25   cited to Your Honor. And they cite no case saying that's the

1 standard for this type of hearing in these circumstances on the  
2 factual disputes.

3 Let's talk about a few of those. Many of them -- give  
4 me just a second, please.

5 Okay. I think the first point I want to make is that  
6 with respect to several of these alleged factual issues -- when  
7 Your Honor asked Mr. Bove to recite them, what he really  
8 recited to you were just exhibits to their motion. Look at  
9 this email. Look at this email. Look at this email.

10 First, we produced the vast majority of these emails  
11 that they're pointing to, to them, in discovery. And I will  
12 remind you, this is in a context of a motion to compel. So the  
13 evidence that they're trying to use to extract a hearing, to  
14 say that we haven't complied with our discovery obligations,  
15 involves stuff that we've already given them.

16 THE COURT: Right. But they read those materials, and  
17 they draw inferences that maybe you don't --

18 MR. HARBACH: Bingo.

19 THE COURT: -- of course, right?

20 And then they view those materials as supporting their  
21 definition of a broader prosecution team than the one you've  
22 offered which is -- it does appear to be narrower than  
23 potentially warranted.

24 MR. HARBACH: I hear you. And I hope I'm going to  
25 answer this concern that Your Honor has.



1           When they say -- when they're saying things like with  
2   respect to the Kohler declaration, what did he mean? That's  
3   not a fact issue. That's an inference. That's an argument.  
4   But saying "I don't know what somebody meant" or saying "I  
5   think so-and-so is lying," that doesn't -- that doesn't create  
6   a fact issue. What creates a fact issue is -- in this context  
7   I don't want to overstate it -- but what you would need is,  
8   even in the best of circumstances, even were there a case  
9   authorizing a hearing like this on such a showing, at a minimum  
10   you would have to point to evidence that demonstrates that such  
11   and such is a lie. And -- and speculation -- we make this  
12   point in our brief, so I won't belabor it. But drawing  
13   inferences and stitching together argument does not a -- does  
14   not a factual issue make.

15           Let me -- let me give you a couple of examples, and  
16   then I think I'm going to sit down.

17           Let's talk about the March 2023 meetings. Mr. Bove  
18   said we have questions about that hearing. That's not -- that  
19   doesn't make a fact issue. That you have questions about what  
20   happened at the hearing, that you want to know more about what  
21   happened at the hearing beyond the generous discovery that the  
22   government has already given you about what happened there.  
23   That doesn't mean there is a fact issue there. That they think  
24   that there -- that they would like there to be a different  
25   interpretation or explanation for what happened at that meeting

1 doesn't mean there is a fact issue.

2           He mentioned redlines. Let's get concrete for a  
3 second. He mentioned that there were redlines. And he  
4 expressed some exasperation that the fact that an agency like  
5 the CIA or any of these other intelligence agencies would draw  
6 redlines, meaning: No, government, you can't use this under  
7 any circumstances, I don't care what the case is. He -- he  
8 said -- maybe I misinterpreted it -- but he said he didn't  
9 understand how that didn't -- that didn't mean that they're a  
10 part of the prosecution team. It's just the opposite. It's  
11 just the opposite.

12           When an agency like that says, "Forget it. No way. No  
13 how. You ain't using that," that's just the opposite. That  
14 means they're not part of the prosecution team.

15           Second --

16           THE COURT: Even if they're working in a  
17 negotiation-type capacity?

18           MR. HARBACH: Okay. Your Honor just mentioned  
19 negotiation. There was --

20           THE COURT: I think I have heard that descriptor used  
21 which is why I raised it.

22           MR. HARBACH: I wasn't suggesting it was a  
23 mischaracterization. I'm just pointing out that there is --  
24 there is that word. There has also been the word, I think,  
25 "collaboration" thrown around or "connection."

1           And, of course, in cases in which the government  
2   is -- has prosecution -- sorry -- is conducting an  
3   investigation, they have occasion to coordinate with, have  
4   connections with --

5           THE COURT: Right.

6           MR. HARBACH: -- have meetings with.

7           And if you want to talk about, like, negotiation, I  
8   don't know whether that's a fairer -- a fairer descriptor or  
9   not, but let's assume it is. We're not -- that's not the  
10   standard. That's not the standard of whether something is --  
11   is -- some entity is within the scope of the prosecution team.

12           Take the example they gave about access to databases by  
13   members of the Special Counsel's office. That -- that's  
14   plainly just a stalking horse for the type of Armstrong hearing  
15   that we have been talking about all morning.

16           Here is another one. The -- when the FBI -- when FBI  
17   agents make taskings or requests to other agencies. That  
18   happens all the time. Of course, the FBI has occasion to  
19   interact with, you know, a victim agency or some other -- some  
20   other portion of government. That happens all the time. That  
21   doesn't -- that does not mean that those -- all those other  
22   agencies within the FBI interacts are automatically part of the  
23   prosecution team.

24           And then the last example, happily; the FBI director  
25   example. Now, this is just a classic bootstrapping argument.

1 I think their argument is that because the government says that  
2 agents from the FBI Washington field office, office in this  
3 district, are part of the case -- sorry -- part of the  
4 prosecution team, that that means that -- that that is a  
5 concession that they're under our control. Okay. It may well  
6 be.

7 But to say that because we don't control Christopher  
8 Ray means that that is the wrong test? Or that that's  
9 not -- that that somehow means that our representation about  
10 why the FBI is part of the prosecution team is wrong or  
11 disingenuous. It doesn't make any sense at all. It's a  
12 bootstrapping argument.

13 I think I'm finished, but I think that I'm going to  
14 finish where I started, which is they need to show the Court  
15 the case. They need to show the Court the case that entitles  
16 them to an evidentiary hearing on this subject, writ large,  
17 period. But arguably, even more pertinently, under these  
18 circumstances. Because we don't -- we don't -- they have no  
19 authority. They have no evidence. There shouldn't be a  
20 hearing. And the Court shouldn't allow them to circumvent the  
21 strictures of Armstrong that they apparently think they can't  
22 meet, which is why we're here.

23 THE COURT: All right. Thank you very much,  
24 Mr. Harbach.

25 Mr. Blanche, I will give you two minutes if there is a

1 quick point you want to make, but then I will be recessing so  
2 that we can have lunch, give the court personnel a break, and  
3 I'm sure everybody in the gallery probably wants a comfort  
4 break too.

5 MR. BLANCHE: Just briefly on scheduling.

6 Your Honor asked the question about the DOJ policies  
7 around interfering with actions during an election year. The  
8 relevant policy or the relevant -- the relevant language is  
9 pretty plain that federal prosecutors and agents may never  
10 select the timing of any action, including investigative steps,  
11 criminal charges, or statements for the purpose of affecting an  
12 election or to give an advantage or disadvantage to any  
13 candidate. I think the appropriate question that the Special  
14 Counsel has not answered is whether, given the scheduling we're  
15 talking about right now and the compact nature, if the Court  
16 determines, as we think makes sense, that a trial could not  
17 take place before the fall, whether the Special Counsel objects  
18 to putting it after the election. Meaning, certainly it's the  
19 Court's decision, and nobody disputes that. But you're going  
20 to lean on -- you're going to ask the parties their view. And  
21 the real question that the Special Counsel has not answered is  
22 whether they agree that it would be complete election  
23 interference to have a trial anywhere near the time of this  
24 election.

25 I mean, we think it already is, for the reasons I have

1 already stated; I'm not going to restate them. But the  
2 question is whether, once we get to September, later August,  
3 October, is the Special Counsel willing at that point to say we  
4 consent to a trial happening after the election? That's the  
5 real question, Your Honor.

6 THE COURT: Okay. On that note, we will take a  
7 one-hour recess until 1:10. Thank you, all.

8 (A recess was taken from 12:09 p.m. to 1:16 p.m.).

9 THE COURT: Good afternoon. Please be seated.  
10 Everybody is present.

11 We will resume, as promised, with legal argument on the  
12 various motions related to redactions and sealing. We have, of  
13 course, a pending motion for reconsideration filed by the  
14 Office of the Special Counsel, along with various spinoff  
15 motions that raise similar issues.

16 For the benefit of the Court, I granted  
17 Ms. Dana McElroy of the law firm of Thomas & LoCicero the  
18 opportunity to present oral argument on these interesting and  
19 important questions that involve, of course, numerous pretrial  
20 motions, including a motion to compel discovery and associated  
21 attachments, and various substantive 12(b) motions on various  
22 topics that reference or attach material obtained in discovery.

23 As some background, for those in the gallery and  
24 listening in through the live feed, the Court previously ruled  
25 on these issues in the context of a motion to compel discovery,

1 concluding at that point that the Special Counsel had not made  
2 a sufficient showing to overcome the presumption of public  
3 access afforded to criminal cases. That order considered all  
4 of the filings that had been submitted to the Court at that  
5 point by both the Special Counsel, the defendants, and the  
6 Press Coalition. And, ultimately, that order generated the  
7 pending motion for reconsideration that is now pending, which  
8 asserts that the Court committed clear error in applying the  
9 First Amendment compelling government interest standard.

10 So that's a preliminary note. I wish to state that, of  
11 course, the Court takes matters involving openness quite  
12 seriously from all angles and, therefore, scheduled this  
13 hearing to hear additional argument on the various interests  
14 involved.

15 So with that broad overview, let me first hear from  
16 counsel for the Amicus. I understand Ms. McElroy is in the  
17 courtroom.

18 Thank you. Please make your way to the podium, ma'am.  
19 I have allotted about 15 minutes for your presentation, and  
20 then I will hear argument from the Special Counsel followed by  
21 defense counsel.

22 MS. MCELROY: Thank you, Your Honor. We appreciate the  
23 opportunity to speak today.

24 THE COURT: I want to make sure everybody can hear you  
25 properly, so just speak up if you can. You don't have to

1 actually touch that whatsoever. I ask that you do not. It's  
2 facing outward on purpose. But just position yourself so that  
3 you're heard.

4 MS. MCELROY: Okay. Thank you. Can you hear me now?

5 THE COURT: Yes.

6 MS. MCELROY: Again, we appreciate the opportunity.  
7 I'm here representing a group of media organizations that we  
8 can refer to as the Press Coalition. We have had a chance to  
9 review all of the filings. And I think the argument this  
10 morning was very instructive. As -- as an initial matter, I  
11 think it's important -- and the Court --

12 THE COURT: Okay. I guess I'm hearing that maybe the  
13 hearing is not as strong as we had hoped.

14 Let's do this. We have some portable microphones. Why  
15 don't we give Ms. McElroy one of those. You can attach it to  
16 your lapel or use the handheld.

17 MS. MCELROY: How is this?

18 Sorry.

19 THE COURT: Oh, that's okay.

20 Ms. Cassisi, do you want to help Ms. McElroy or --

21 MS. MCELROY: Does that work? Is that better now?  
22 Better now?

23 THE COURT: I think so.

24 Mr. Blanche, can you hear Ms. McElroy?

25 Let's do a test. Let's do a test.



1 MR. BLANCHE: Let's do a test. Thank you.

2 THE COURT: Happy Friday.

3 THE WITNESS: Happy Friday. Happy Friday.

4 I guess I will have to hold it.

5 MR. BLANCHE: Maybe if it's just a little louder with  
6 the voice, it would be okay. I would appreciate it.

7 MS. MCELROY: Okay. I will try to speak up.

8 MR. BLANCHE: Okay. Thank you.

9 THE COURT: Okay. Thank you.

10 MS. MCELROY: First, I would like to start by  
11 acknowledging that the order under reconsideration, it is our  
12 position, the Press Coalition, that the Court applied precisely  
13 the correct standards.

14 In that regard, looking at the Press Enterprise cases,  
15 for example, the public's confidence in the integrity of a  
16 prosecution is one of the most vital values that underlies the  
17 right to a public criminal trial. Transparency about the  
18 actions of our government, including the judiciary, is one of  
19 the cornerstones of democracy. And against that backdrop, what  
20 we have in this case, as Your Honor well knows, is a former  
21 president, public official, accused of wrongdoing in connection  
22 with classified documents. And we also have now a filing in  
23 which the former president and the other defendants essentially  
24 are calling into question alleged discovery violations in  
25 connection with the scope of the prosecution team.

1           And so, really, although styled as a motion to compel,  
2   I think what's developed through the record filings and the  
3   argument this morning makes clear that this is, in fact, a  
4   substantive motion that goes to the very heart of the issues in  
5   this case to be decided. It's not simply a discovery motion in  
6   the way, I think, that the government would like to  
7   characterize it and apply what I would consider to be a rather  
8   ordinary standard in an extraordinary case. That is not the  
9   law.

10           Whether you apply the First Amendment right of access  
11   to the records that are at issue here or you apply the common  
12   law, Magistrate Judge Reinhardt has recognized that, in fact,  
13   the tests are similar. And this Court, from what we can tell  
14   in the public facing documents, carefully reviewed the motion,  
15   the attachments, and the other matters that are under seal --  
16   and we don't know what those are -- applied the correct test, a  
17   heightened scrutiny test that under any circumstance would be  
18   appropriate in a prosecution of this magnitude.

19           I think it's especially clear the more that we heard  
20   today, that the questions by the defendant go more to bigger  
21   issues than just "we need some discovery that we're not  
22   getting." And none of the cases cited by the government really  
23   address that issue where you have, essentially, a substantive  
24   motion.

25           THE COURT: So let's talk about that a little bit.

1 What is your definition of a judicial document? And how do you  
2 view the motion to compel that was filed in this case? Does it  
3 fall within the, quote, discovery motion category? Or does it  
4 fall within the substantive pretrial motion category requiring  
5 judicial resolution?

6 Again, this is bound up in the Chicago Tribune case  
7 which is a civil case. So I'm interested in your views on the  
8 extent to which Chicago Tribune should or is extendible to the  
9 criminal context.

10 MS. MCELROY: I think Chicago Tribune is clear that  
11 it's a -- you know, it concerned a civil case. It has been,  
12 the idea being, that it recognized a First Amendment right of  
13 access to documents in a criminal case. But carved out, the  
14 situation there was post- -- you know, post-lawsuit, the press  
15 came in and tried to intervene, tried to get to documents there  
16 that were considered to be trade secrets. And the Court was  
17 especially, I thought, you know, elucidating that -- let me  
18 just find the case. I apologize. It said -- it said there  
19 that the constitutional right of access has a more limited  
20 application in the civil context than it does in the criminal,  
21 of course. Materials gathered as a result of the civil  
22 discovery process do not fall within that scope.

23 And that's really not what we're talking about here.  
24 What I believe that we're talking about and what many of the  
25 cases that we cite point to, is truly a judicial document. And

1 judicial documents are defined in many, many ways, but one way  
2 that it's defined in the Al -- Shahi case is used, if -- if the  
3 issues are being used to determine a litigant's legal rights.  
4 And I think that's what we heard this morning from defendants.  
5 There -- they're alleging and pointing to facts, all of which  
6 we cannot see, that this prosecution is vindictive, politically  
7 motivated, and that there is some sense that the scope of the  
8 prosecution hasn't been broadly enough defined. Those -- those  
9 issues go to the very heart of the case. And they also, of  
10 course, as I understand it, go to what discovery could possibly  
11 be -- be due. But they essentially go to how wide is the net  
12 cast, and, also, then getting to motivation. And that  
13 unquestionably, I believe, is -- qualifies as a judicial  
14 document; the motion itself, any filings that are associated  
15 with it. Because it's not simply, we need some more discovery.  
16 It is -- it is actually raising allegations that are central to  
17 the case in the end.

18 THE COURT: Are you aware of any cases specifically in  
19 the 11th Circuit that address this issue in the criminal  
20 context specifically?

21 MS. MCELROY: Judicial documents?

22 THE COURT: Yes. Or documents filed in the course of  
23 pretrial proceedings.

24 MS. MCELROY: There are many cases that talk about  
25 documents filed in the course of pretrial proceedings. Let me

1 see. In the 11th Circuit --

2 Well, I first also wanted to point out that under  
3 U.S. vs. Marivel cited by the defendants, it's up to the  
4 Court's discretion, in any event. And the Court has a right to  
5 exercise that discretion.

6 In Newman vs. Graddick is one case in which there was  
7 a -- a right attached to documents there that were -- that was  
8 a civil case. But a right attached to what was considered to  
9 be a quasi criminal set of documents.

10 I can't, off the top of my head, come up with more  
11 documents. We have, of course, had portions in this case of  
12 the search warrants that have been ruled to be by  
13 Judge Reinhardt should be disclosed under a First Amendment  
14 and/or common law analysis that's heightened from a good cause  
15 standard.

16 So in this case in particular and cases that we cited  
17 in our motion, Judge Reinhardt recognizes the right of the  
18 press and public, and that's really what we're here to  
19 understand. And I think what this motion raises is, How does  
20 this process work? What is a scope of prosecution?  
21 What -- what does that mean in the -- in the context of  
22 prosecuting a former president for -- for allegedly withholding  
23 or taking classified documents?

24 And so the educational function alone, in addition  
25 to -- to the check and balance system of being able to see and

1 understand the workings, but the educational function, which is  
2 a part of the actual good cause test under the common law  
3 right.

4 THE COURT: So just to clarify your position  
5 for -- from what I understand, the Special Counsel's view is  
6 that, because the motion to compel attaches materials obtained  
7 in discovery, that it is a discovery motion; that it,  
8 therefore, receives only the good cause standard, despite this  
9 being a criminal case. And I would like to hear from you what  
10 is your view on the application of the good cause standard  
11 alone in this case for purposes of the motions to compel? And  
12 then do you distinguish that at all for the pretrial motions  
13 that are explicitly filed under Rule 12(b), such as the motion  
14 to suppress, motion to dismiss indictment, et cetera?

15 MS. MCELROY: I think that the -- the good cause  
16 standard they have referenced, the government has referenced,  
17 is sort of a watered-down version of what the courts have  
18 defined good cause to mean in the context of access to judicial  
19 records under the Nixon case, which is very much aligned with  
20 the First Amendment. So it's -- it's a little  
21 bit -- it's -- it's like good cause, but not just when you're  
22 in a civil case or, you know, this is good enough. You have to  
23 balance the public's rights of transparency against a  
24 compelling or serious issue on the other side.

25 And I'm not saying that they couldn't do that. But the

1 good cause, as they are reading it, is far too narrow when you  
2 look at the constitutional framework and even the common law  
3 framework of access to judicial records filed in criminal  
4 cases.

5           And I do believe that those same standards are  
6 definitely going to apply to any motions to suppress, any  
7 pre -- any other pretrial motions. And that's sort of -- I  
8 think the parties today used the word "cascading." Well, once  
9 you start to cascade sealing, that you then have then closures  
10 when you're talking about the records that -- that the public  
11 is seeking access to. So you end up with a situation where you  
12 have so much secrecy that it's very, very difficult to -- for  
13 the public to understand what's happening and to really judge  
14 the process.

15           I think the allegations here are serious. And whether  
16 or not they're true, nobody knows just yet. But the ideas  
17 expressed in the filings by Former President Trump I think are  
18 so critical to -- to the understanding of what ultimately is at  
19 stake in the prosecution of a public official which, of course,  
20 a former president, to my knowledge, is unprecedented. And  
21 that's why I believe strongly that, given the line, the  
22 unbroken line of cases from the U.S. Supreme Court and the  
23 cases in the 11th Circuit, I don't think there is any doubt  
24 that the 11th Circuit would apply a First Amendment standard  
25 or, at a minimum, the heightened standard of good cause under

1 the common law right.

2 THE COURT: Why do you say that?

3 MS. MCELROY: Well, you can read the cases that -- that  
4 are even cited by the government. The cases that are cited by  
5 the government --

6 THE COURT: Well, I think they would say the Chicago  
7 Tribune, although a civil case, references discovery motions  
8 and so we should apply that in the criminal context, even  
9 though that decision expressly makes a point about  
10 distinguishing the two contexts.

11 MS. MCELROY: Right. And in the -- it really does.  
12 And it actually talks about the -- the Chicago Tribune case  
13 does talk about and gives nod to the idea that, you know, there  
14 is a common law right of access and you have to distinguish  
15 between things that are properly considered public or judicial  
16 records and those that are not. That's the distinction that  
17 I'm trying to make here. Even in that case they recognized,  
18 the Court did, that we're not talking about garden variety  
19 discovery materials that are filed in connection with a motion.  
20 We're talking about a motion, although styled a motion to  
21 compel, and all of the offshoot responses that really, again,  
22 get at central due process concerns that are really the type of  
23 records. And then, you know, concurrent after that, access to  
24 proceedings, should the Court set hearings on these issues.

25 THE COURT: Just to make sure, can everybody hear



1 Ms. McElroy or is the audio -- okay. Please proceed.

2 MS. MCELROY: In the Nixon case it's a good example of  
3 where the 11th Circuit is cited by the government where the  
4 11th Circuit basically did not find a common law right. And  
5 there it was a situation where the -- the government had asked  
6 for an in camera inspection, much like you would see under, I  
7 guess, it's Rule 16. And -- and the Court had found that  
8 the -- after doing an in camera inspection, that it did  
9 not -- the transcript did not need to be turned over to the  
10 defendant under Brady. And when the defendant appealed his  
11 conviction, the Court said that was not the type of record that  
12 would fall within the First Amendment right of access. And you  
13 can see why. They likened it more to a discovery -- a real  
14 true discovery-type record, as in the Anderson case, which was  
15 a Rule 12 bill of particulars.

16 We're really talking again, and I can't make the  
17 distinction enough, while it's true -- and I would concede that  
18 discovery materials are classically not covered or not within  
19 the scope, particularly unfiled discovery materials, but this  
20 is a different scenario. This is a scenario where the  
21 defendant has come to the Court, brought forth discovery  
22 materials, alleging serious issues with the prosecution that I  
23 believe the Court will need to decide to determine the scope of  
24 discovery, and also the defendants' due process rights.

25 And in that scenario we're really looking at a true

1 substantive motion, a judicial document to which a  
2 First Amendment and/or again common law right of access  
3 applies. And the Court, I think, has been mindful to review  
4 the material and to review it with an eye towards what the  
5 government is saying in terms of compelling or competing  
6 interests. And we would -- we would say that that is the  
7 Court's function as a gatekeeper to continue to do that.

8 But in that regard, the government does have a burden  
9 to show that what will -- what they fear will happen will  
10 actually happen. And it's more than speculation and it's more  
11 than argument. I think they argued this morning the exact  
12 opposite in terms of what -- you know, you can't use argument  
13 as facts. And I think that that's -- that's the situation  
14 we're in on a very important issue that will become -- it  
15 appears, anyway, to the press -- become a bigger issue in the  
16 case.

17 THE COURT: Okay. Does it make any difference to you  
18 that the defendants are not seeking closure of these materials?  
19 Because occasionally in the case law you have a defendant who  
20 is arguing in favor of closure to protect his or her right to a  
21 fair trial. We don't have that here. Does that impact your  
22 inquiry at all?

23 MS. MCELROY: I think it really does because you're  
24 not -- you don't have competing constitutional interests where  
25 you typically would. There are lots of case law concerning a

1 defendant's Sixth Amendment right to a fair trial. But there  
2 is also case law, which I'm sure the parties will discuss,  
3 where the defendant also has a right to a public trial.

4 And it definitely -- definitely the situation we are  
5 normally in is where a defendant seeks to shield information  
6 that that defendant believes will jeopardize its right to a  
7 fair trial, or their -- his or her right to a fair trial. We  
8 don't have that same kind of competing constitutional interest  
9 in the balancing that the Court must do. Or, not that there  
10 aren't serious concerns; there are. But I think it's the  
11 Court's function to review the materials that we can't see,  
12 and -- and make judgments and determinations, and that's really  
13 within your discretion to do so.

14 THE COURT: All right. I think this might be my last  
15 question for you and then I will ask that you wrap up.

16 Of course, I'm going to hear from Mr. Harbach or  
17 Mr. Bratt on these issues, but as far as I can tell, their  
18 position is that if the document references material obtained  
19 in discovery in a criminal case, it never gets the benefit of  
20 First Amendment protection because the information at issue  
21 derives from discovery.

22 Are you aware of any case that applies that view?

23 MS. MCELROY: Well --

24 THE COURT: In other words -- and perhaps I was  
25 confusing in my articulation. But I think the argument is that

1 the second it references discovery material, even if in a  
2 criminal case and no matter what type of motion it is, could be  
3 the most substantive motion in play, it will not get the  
4 First Amendment protection because it implicates discovery  
5 material.

6 MS. MCELROY: Absolutely not. And, in fact, the Court  
7 in your order cited to the Time case, and we've cited to other  
8 cases in our papers. There is not such a case that says that  
9 because it could never be the case that just because it's  
10 discovery material when it's brought to the Court -- for  
11 example, in a motion to suppress. That -- that's a public  
12 proceeding, typically, and a public filing. So it's just at  
13 what point in the process?

14 If you're just pouring discovery material into the  
15 record in order for it to become public, that's a different  
16 situation. That's not the situation that we have here. And no  
17 case says ipso facto discovery in and of itself means that you  
18 never get access to it. It really is attached to: What is the  
19 bigger picture in what the Court is doing? What is the  
20 judicial labor all about in this case?

21 And the judicial labor by the Court, of course, is  
22 going to be to decide, as much -- as much as I can understand  
23 it, the scope of the prosecution, and also to what extent that  
24 would impact the defendant's rights, both in terms of due  
25 process rights, for any, also, motion to dismiss the

1 indictment, any motions to suppress, any Brady material, all of  
2 the substantive things that will be discussed. It's not simply  
3 discovery material.

4 But, no, absolutely not. Discovery does -- you do  
5 factor in what type of a document it is, and you can see that  
6 in the 11th Circuit cases. But the discovery that they're  
7 talking about in those cases can be easily distinguished from  
8 what we're talking about here. And so it's a red herring to  
9 me.

10 THE COURT: Again, the Anderson case, I think it was  
11 a -- a 404(b) notice, or something along those lines, a notice  
12 advising the defendant of the government's intent to use  
13 evidence of a prior conviction, not a motion itself.

14 Am I correct in that understanding?

15 MS. MCELROY: Yes.

16 THE COURT: All right. Well, thank you. If you don't  
17 have anything further, Ms. McElroy, I will then turn to hear  
18 from Mr. Harbach or Mr. Bratt.

19 MS. MCELROY: Thank you, Your Honor.

20 MR. HARBACH: Just a second, Judge, please.

21 THE COURT: Take your time.

22 MR. HARBACH: Good afternoon, Your Honor.

23 THE COURT: I do want to make a quick point. Do you  
24 plan on showing any exhibits or materials?

25 MR. HARBACH: No, ma'am.

1 THE COURT: Okay. If you were, then, of course, you  
2 would let me know in advance because that wouldn't transmit to  
3 the overflow room.

4 MR. HARBACH: Yes, Your Honor.

5 I hope it's helpful to outline for Your Honor at a high  
6 level what my presentation is going to cover today. First, I'm  
7 going to -- I will make just two preliminary points. Then I'm  
8 going to turn to the substantive legal standards that are  
9 applicable to various combinations of discovery and motion  
10 types. Then, the third thing is, I would like to revisit where  
11 we are procedurally in terms of what the parties have done and  
12 where we're -- where we are. And then, finally, application of  
13 those legal principles that I have articulated to -- at the  
14 beginning the categories that the Court laid out in its agenda  
15 order for today. But at that point, if Your Honor wants to get  
16 more specific, I will -- I will be guided by Your Honor.

17 And I will also say that I will ask for just a little  
18 patience. I assure the Court that I will get to and address  
19 completely and in detail the question Your Honor was posing to  
20 the Press Coalition about why a motion to compel in our view is  
21 not a judicial document. I promise I will address that, but I  
22 just need a little time to get there.

23 Okay. So the two preliminary points that I would like  
24 to make are, first, why we're here. Your Honor articulated  
25 very clearly its interest in assuring the openness of these

1 proceedings in accordance with the Constitution and the law.  
2 The government shares that -- shares that position, obviously.  
3 Another position that we both share is having a dual  
4 responsibility to protect witnesses and to ensure the integrity  
5 of the criminal process.

6 Part of that responsibility in any criminal case is  
7 maintaining the confidentiality of witnesses' identities for  
8 both reasons, both safety and the integrity of the proceeding.  
9 But in this criminal case, it is especially important because  
10 of all that has already happened elsewhere. There has been so  
11 much harassment, intimidation, threats to witnesses, threats to  
12 court staff, law enforcement, connected to any case in which  
13 Mr. Trump is a defendant. In the government's view, this is  
14 not some hypothetical concern as they suggested in their filing  
15 last night. It is a real concern, and they know it. That is  
16 why we spend as much time as we have briefing this and doing  
17 the tedious scrubbing of all of the exhibits and line by line  
18 on all of the motions that they have filed.

19 THE COURT: Well, of course, that was after -- after  
20 not doing so initially --

21 MR. HARBACH: Yes.

22 THE COURT: -- to be frank.

23 MR. HARBACH: And you've presaged my next preliminary  
24 point. Why didn't we make more of a showing initially? Let's  
25 just say it.

1 THE COURT: And in order to challenge any of the legal  
2 standards being put forth, so -- and that's to say nothing of  
3 the local rule requirement that would have required a  
4 particularized showing. So even at the most basic level, the  
5 showing was deficient.

6 MR. HARBACH: Yes, Your Honor. I understand that, that  
7 message. And I would just like to make a few observations  
8 about that. And it's not by way of -- not by way of fighting  
9 you on that, but it is by way of explanation.

10 As -- as we explained in our papers, we relied, perhaps  
11 overly so, in our understanding of the import of the protective  
12 order in this case. It's the entire purpose of a protective  
13 order. The defendants make no mention of a protective order  
14 anywhere in their papers. This is a protective order that was  
15 entered by a judge of this court. And, by the way, it was  
16 unopposed. And it was entered for the reason that all  
17 protective orders are entered, to protect nonpublic information  
18 relating to witnesses, other third parties, grand jury  
19 exhibits, grand jury transcripts, and recordings of witness  
20 interviews. That litany of stuff is what was in our motion for  
21 the protective order.

22 So please don't misunderstand the point here.  
23 The -- had the government to do it over again, we -- we would  
24 have done what we later understood to be Your Honor's  
25 expectations and satisfied them in a more fulsome manner.



1 But the two observations on that are, one, we were, as  
2 I say, fully cognizant of the protective order. So it had  
3 nothing to do with the importance of witness security being  
4 anything other than the forefront of our minds. And, Number 2,  
5 despite whatever noise there may be out there, I know  
6 Your Honor knows this, but I'm going to say it anyway, at no  
7 point did we mean any disrespect to the Court, either in what  
8 we filed initially or in filing our motion for reconsideration.

9 We -- we want to get this right, and we want to put the  
10 Court in the best possible position to get this right. We  
11 recognize that we could have done a better job of that  
12 initially, and so we are owning that.

13 So those are the two preliminary points I wanted to  
14 make.

15 If we could turn to the substantive legal standards  
16 now. And I'm -- I'm going to walk through them. I think  
17 starting with what is probably non-controversial and then maybe  
18 getting to some of the stickier ones.

19 I think we can all agree, and I believe I heard the  
20 lawyer for the Press Coalition say, that for discovery  
21 materials in general, putting aside their potential attachment  
22 to a motion, that there is no First Amendment right of access  
23 to those, and there is no common law right of access to those.  
24 That's straight from Chicago Tribune and many other cases  
25 citing in our briefing.

1 THE COURT: I don't think anybody is disputing that,  
2 nor did the Court's order insinuate as much. I think we're all  
3 on the same page there.

4 MR. HARBACH: Okay. But an important point to remember  
5 that is part of the factual record here is, this isn't just  
6 discovery, it's discovery that was produced under a protective  
7 order. A protective order that, again, was supported by good  
8 cause and that the defendants did not oppose.

9 THE COURT: Well, sir, I take that point. But a  
10 protective order, at the end of the day, is a contract between  
11 parties. It doesn't bind the Court. It doesn't supplant  
12 binding legal principles that have to be applied. It doesn't,  
13 for example, obviate the need to make the showing under the  
14 local rule. And so we're still in a position of -- and I get  
15 your point on the reliance issue with the protective order, but  
16 just looking at the legal principles now -- and let's get to  
17 the heart of it -- understanding there is no freestanding right  
18 to discovery just floating around, I completely agree with  
19 that.

20 What happens when that material is made part of and is  
21 relied upon by defendants in pretrial motions? And pretrial  
22 motions, of course, have different flavors. On the one hand,  
23 we have the motion to compel discovery, and then, on the other  
24 hand, we have a number of other substantive motions.

25 MR. HARBACH: Okay. So I -- a couple of things in

1 response.

2 First, because Your Honor mentioned it a moment ago, I  
3 think it might be helpful to discussing the civil/criminal  
4 distinction.

5 THE COURT: Yes, please, that would be helpful.

6 MR. HARBACH: Okay. So to that point, we pointed out  
7 in our papers two cases, both of which have been mentioned this  
8 morning; both Nickens and Anderson. Anderson, which predated  
9 Chicago Tribune, and Nickens with postdate -- which postdated  
10 Chicago Tribune.

11 Now, bear with me one second.

12 THE COURT: Are you going to talk about Nickens first?

13 MR. HARBACH: Well, Nickens, I was going to  
14 mention -- I mean, I recognize it as a possible limited utility  
15 where we are, but it is a criminal case.

16 THE COURT: Why? Because it's unpublished? Or --

17 MR. HARBACH: No, no, no. No, I just mean because it  
18 doesn't get to the motion point. It just says discovery. So  
19 on the issue of whether discovery in general is subject to  
20 either a First Amendment or a common law right of access even  
21 in a criminal case, we think Nickens answers that.

22 Furthermore, Anderson, which is also a criminal case --  
23 this case was decided right after Press Enterprise. And so --  
24 and the conclusion of Anderson in this criminal case is that  
25 discovery is not -- does not qualify for a First Amendment

1 right of access. And they apply the same history and logic  
2 test that the Supreme Court applied in Press Enterprise. This  
3 is on Anderson at page 1441.

4 THE COURT: What specifically was the document at issue  
5 in Anderson?

6 MR. HARBACH: I think Your Honor may have been right  
7 about it being a bill of particulars and its -- its notice.  
8 That's right.

9 THE COURT: So why isn't that --

10 MR. HARBACH: Or a 404(b), excuse me.

11 THE COURT: -- distinguishable? That's very different.  
12 That's a notice. It's not a substantive motion. It's not put  
13 before the Court for judicial resolution of any substantive  
14 legal claim unless it then is converted into a motion for  
15 introduction of 404(b) evidence, perhaps. But on its own, the  
16 notice functions like that freestanding discovery principle  
17 that I think we agree about.

18 MR. HARBACH: If what Your Honor means to say is that,  
19 in the Court's view, the distinction in Anderson  
20 between -- whether -- whether what type of document it is isn't  
21 really controlling, if it's -- if it's discovery -- again, I'm  
22 not talking about what it's attached to yet.

23 THE COURT: Uh-huh.

24 MR. HARBACH: But if it's discovery, it's -- it is not  
25 subject to a First Amendment right of -- right of access.

1           THE COURT: I think -- I think the trouble that I have  
2 with your view is that it seems to say that no matter what the  
3 discovery is used in, if it's discovery, then in a criminal  
4 case, the First Amendment qualified right of access wouldn't  
5 apply. That seems to be the logical import of your position,  
6 as far as I can tell. And I haven't seen any case law to  
7 support that.

8           MR. HARBACH: Right. And our position is not that  
9 because any motion that any discovery gets attached to  
10 automatically means it's insulated from any disclosure. It's  
11 not our position. It's not our position.

12          THE COURT: Okay.

13          MR. HARBACH: But I think it does -- it does matter  
14 what type of motion it is. In other words, whether it is a  
15 judicial motion is the -- the terminology that we have been  
16 using to this point. If it is -- if it is a regular, mainline  
17 discovery motion, like a motion to compel, and the government's  
18 position is that by virtue of its function as part of the  
19 discovery process and it being limited in that way, that it  
20 also -- that that motion and its attachments are also not  
21 subject to a First Amendment -- let's put it this way -- at  
22 best, maybe a common law right of access.

23                 And this -- this is the -- the source of the Court's  
24 error, in the government's view. For the reasons laid out in  
25 our brief, the -- the Court applying the heightened

1 First Amendment -- Your Honor understands -- so that is why our  
2 view is that when --

3 THE COURT: I guess that's what I would like to  
4 understand a bit more. As far as I can tell, there is  
5 no -- you rely heavily on Chicago Tribune. It's a civil case.  
6 Your position, essentially, requires extending that to the  
7 criminal context.

8 MR. HARBACH: Correct.

9 THE COURT: Okay.

10 MR. HARBACH: But we argue -- I'm sorry to interrupt,  
11 Your Honor.

12 THE COURT: No, please.

13 MR. HARBACH: I was just going to say that it's the  
14 reasons that I explained a moment ago, cases like Nickens and  
15 Anderson that make it plain, in our view, that that same  
16 principle applies in the criminal context. Period.

17 THE COURT: What do you make of the footnote in  
18 Anderson that seems to sort of carve out Rule 12(b) motions?  
19 And I can't find my copy of Anderson for some reason.

20 MR. HARBACH: That's okay, Your Honor. I know the  
21 footnote you're talking about.

22 Well, first of all, I don't -- our reading of that is  
23 that it is not -- it is not quite the same carve-out that the  
24 defense reads it as. It's footnote 2 on page 1440, Your Honor.

25 THE COURT: So they're talking there, trying to

1 distinguish the notice. Again, it's a 404(b) notice.

2 MR. HARBACH: Uh-huh.

3 THE COURT: And the Court says, quote, the defendant's  
4 motion for notice of similar acts evidence cannot be regarded  
5 properly as a Rule 12 motion requesting discovery under Rule 16  
6 because similar acts evidence doesn't fall within the  
7 categories of information such as documents and tangible  
8 objects that the government must furnish upon the defendant's  
9 request.

10 So --

11 MR. HARBACH: I just -- I note the distinction. I  
12 just -- I think it is -- it is reading too much into that  
13 footnote to -- to say the conclusion that the defendants draw  
14 from it. That, as a result, a First Amendment right of access  
15 would apply. We just don't read it that way. And so --

16 THE COURT: Would you acknowledge that other circuit  
17 courts have applied the First Amendment in pretrial  
18 proceedings, including at least one circuit, the 4th Circuit,  
19 in the context of a motion to compel? I know you --

20 MR. HARBACH: You are talking about --

21 THE COURT: -- you recognized that it's maybe not the  
22 most fulsome explanation of what is going on in that opinion,  
23 but I think we would all agree that it's at least involving a  
24 motion to compel, among other motions.

25 MR. HARBACH: You're talking about the 4th Circuit's

1 case in In Re: Time?

2 THE COURT: Yes.

3 MR. HARBACH: Yes, Your Honor. It plainly says what it  
4 says. Our position on that is that because it is phrased in  
5 that way and in that manner and in an undifferentiated manner,  
6 that -- that the 4th -- that one should not extend the  
7 4th Circuit's holding there to reach the documents that  
8 underlie the discovery motion.

9 THE COURT: So how do you -- in the criminal context,  
10 how do you create a principled distinction? It just seems  
11 like -- so we would say on the one end, if it's -- if it's a  
12 discovery motion, we treat it a certain way. We apply only the  
13 common law right of access which requires balancing of  
14 interests, maybe even something lesser, according to the  
15 Special Counsel. But then when we shift over to pretrial  
16 motions, we apply a different standard --

17 MR. HARBACH: Uh-huh.

18 THE COURT: -- in the First Amendment context because  
19 it's a criminal case. Of course, the 9th Circuit seems to  
20 think there would be, really, no meaningful way of drawing  
21 those distinctions, and we would just, sort of, treat these as  
22 pretrial motions in pretrial proceedings which are, of course,  
23 pivotal and essential to criminal cases.

24 So these are complicated issues. But I think one thing  
25 is clear. There is no clear decision from the 11th Circuit



1 that would warrant an assessment that the Court's order was  
2 clearly erroneous.

3 MR. HARBACH: Okay. Agree with you, it's a complicated  
4 area of the law. I will not purport to have surveyed the state  
5 of the law in all of the circuits. But where we part company  
6 with the Court is the last point, obviously.

7 It is our view that Chicago Tribune, in saying what it  
8 says, which is explicit not only about the discovery material,  
9 but also -- even when -- even when it's filed with discovery  
10 motions. We all know the language that we're relying on. And  
11 what I have been trying to explain to Your Honor this morning  
12 is that there is -- in light of the cases like Nickens and  
13 Anderson, there is no reason to believe it shouldn't -- it  
14 shouldn't -- there is no reason to believe that the situation  
15 would be any different in a criminal case.

16 We acknowledge --

17 THE COURT: I think that's debatable. The Press  
18 Coalition seems to think there is a much higher likelihood that  
19 the 11th Circuit would apply a First Amendment standard.

20 But can we now get to the nuts and bolts? So I would  
21 like to talk about some of the categories of information that  
22 you're concerned about. Obviously, I'm open to reasonable  
23 measures to protect witness safety. Clearly, I think the  
24 safety and well-being of witnesses has to be -- has to be  
25 considered in top of mind. But, of course, it has to be

1 accompanied by a sufficient showing.

2 And what I'm concerned about is the sort of blanket  
3 request that you make in your papers that any witness name or  
4 statement warrants redaction from public view. Perhaps you  
5 have an argument that is compelling on the name, and maybe  
6 there is a way to do some kind of anonymization list. But then  
7 you start to get into substantive statements, and the case law  
8 really starts to fall apart to suggest that substantive  
9 statements of witnesses whose statements are made part of  
10 substantive pretrial motions all of a sudden get off the table.

11 MR. HARBACH: Yes. I -- I'm going to hesitate right  
12 now to make too many broad-brush pronouncements about the law,  
13 but I think -- I think it is helpful to examine application of  
14 these principles here. And I think that I would like to make  
15 one more comment about our position on the law. It will be  
16 brief. I just wanted to make sure Your Honor understands.

17 Our position is that for discovery attached to  
18 dispositive Rule 12 motions, for example, our position is a  
19 little different. Chicago Tribune makes quite clear that there  
20 is a qualified common law right of access and that it attaches  
21 to those materials. So I --

22 THE COURT: But you don't even agree that on that it's  
23 First Amendment?

24 MR. HARBACH: That's right.

25 THE COURT: Okay. Even though it's a criminal case?

1 MR. HARBACH: Correct.

2 THE COURT: And even though other circuits have applied  
3 the First Amendment to substantive pretrial motions?

4 MR. HARBACH: When you say "applied the  
5 First Amendment," you mean --

6 THE COURT: Yes. Required a compelling government  
7 interest showing narrowly tailored.

8 MR. HARBACH: Okay. So I think that the question about  
9 whether the common law right of access attaches or the  
10 First Amendment right of access attaches, I think Chicago  
11 Tribune answers that question definitively in the 11th Circuit.

12 THE COURT: Even for criminal cases?

13 MR. HARBACH: Yes. But please -- please recall what  
14 the -- what the result of our position is. We are agreeing  
15 that a common law right of access applies --

16 THE COURT: But what -- I guess I don't understand why  
17 the resistance to applying the First Amendment? This is, after  
18 all, a criminal case. You have Press Enterprises. You have  
19 other cases that emphasize the fact that criminal cases require  
20 and warrant a more elevated showing. I don't see that really  
21 engaged with in your papers, and it's almost like we start at  
22 that civil proposition and never get higher.

23 MR. HARBACH: Well, it -- well, if by "that civil  
24 proposition," you mean Chicago Tribune, that's what -- that's  
25 what we're relying on. That's right. Because that's what

1 the -- that's what the opinion says.

2 THE COURT: Right. But it clearly draws a distinction  
3 as between criminal and civil. And I'm not sure that you're --

4 MR. HARBACH: Well -- I'm sorry, Your Honor. You're  
5 not sure that we're -

6 THE COURT: That you're quite acknowledging the fact  
7 that the Chicago Tribune is a civil case. So then it really  
8 gets us to the Press Enterprises point, and then we talk about  
9 logic and experience. And then we ask ourselves, well, what  
10 place, what process are we in? And it can go on and on. It's  
11 very academic.

12 But what I want to understand is, why the  
13 First Amendment, in your view, doesn't apply whatsoever as long  
14 as the information cited in the substantive motion derives from  
15 discovery, which I think is your position.

16 MR. HARBACH: That is correct. And -- and I -- I'm not  
17 sure what else I can say other than we think that the holding  
18 in Chicago Tribune controls, and that its being a civil case is  
19 not enough to change that result.

20 THE COURT: Okay. I understand your point.

21 MR. HARBACH: Now, as I said earlier, before we -- I do  
22 want to talk about the Court's categories, but I also would  
23 like to -- because there have been so many motions and exhibits  
24 and whatnot flying around, I want to try and do a little  
25 organizing, if that's okay with Your Honor.

1           So let's talk about what's happened to this point.

2       With respect to both types of motions, that is to say, the  
3       motions to compel which we allege are discovery motions and the  
4       Rule 12 motions which we agree are substantive in some sense.

5           With respect to both of those motions, the government  
6       has proposed, requested, and requested from Your Honor, limited  
7       redaction and sealing. We have not taken the position  
8       (indicating) it's all off limits, forget about it. Even  
9       for -- for straight discovery motions like their motions to  
10      compel, in our view it would have been fully defensible for us  
11      to have taken the position that none of those exhibits should  
12      be public in any portion whatsoever. But we did not do that.

13           For the Rule 12 motions, we think it would have been  
14      fully defensible for us to have taken the position that because  
15      the discovery was produced under a lawful protective order,  
16      that good cause was necessarily found, justifying sealing all  
17      of those exhibits, but we didn't do that. We didn't take that  
18      position either. In both instances we have requested and tried  
19      to talk to the defense about very -- in our view very limited  
20      redactions. And to the extent that the right of access applies  
21      to the motions themselves, we have requested really limited  
22      redactions in those that, in our view, are amply justified by  
23      good cause.

24           THE COURT: On the -- on the limited nature of your  
25      redactions, is it the case that you're seeking the redaction of

1 any substantive statement made by a, quote, potential  
2 government witness? And I have a couple of questions here.

3 Number 1, I know there was a witness list of some kind  
4 that was exchanged as part of the bond proceedings in this  
5 case. How many people are on the list of potential government  
6 witnesses?

7 MR. HARBACH: I want to make sure I understand  
8 Your Honor's question. Are you asking how many people were on  
9 that list at the beginning of the case?

10 THE COURT: Well, I hear a lot of potential government  
11 witnesses, and I want to know are we talking about 200? 100?  
12 What's the likelihood that these people even testify? It's  
13 hard to tell.

14 MR. HARBACH: Can I have just two seconds on that.

15 THE COURT: Yes. Yes.

16 MR. HARBACH: Your Honor, I think -- I can offer an  
17 answer that might be somewhat helpful. My colleague reminds me  
18 that that initial list that we supplied in connection with  
19 the --

20 THE COURT: The no contact order.

21 MR. HARBACH: Thank you, Your Honor. Was about -- was  
22 80-some people.

23 THE COURT: Yes. I recall the number 87.

24 MR. HARBACH: Something like that.

25 THE COURT: Okay.

1 MR. HARBACH: Our -- our estimate at this point is that  
2 the number of government witnesses at trial will be something  
3 in the neighborhood of 40 or so.

4 THE COURT: Okay.

5 MR. HARBACH: But for these motions, the ones the  
6 defendants are talking about, for the -- for the instances  
7 where we have claimed or requested redactions because they're  
8 witness statements, I mean, that number is probably more like  
9 25, 20 -- 25 or so.

10 THE COURT: So a majority of the likely witnesses are  
11 the subject of these redaction issues, give or take some.

12 Okay. I at least have a better sense of the numbers.

13 MR. HARBACH: Yes.

14 THE COURT: Now, as far as the redactions, if some  
15 materials were obtained by defendants through FOIA requests and  
16 then others from discovery, I tried to figure out if any of the  
17 proposed redactions were being made on the FOIA materials, and  
18 I wanted your answer on that.

19 MR. HARBACH: Zero.

20 THE COURT: Okay. That's what I thought.

21 Okay. Is there any crossover in terms of the names,  
22 some of the names appearing in the FOIA versus the discovery?

23 MR. HARBACH: There might be. But -- but even if there  
24 were, that wouldn't be a reason to unseal it in the discovery,  
25 in our view. In other words, something that's

1 public -- publicly accessible via FOIA and obtainable, one  
2 might say, oh, well, that person's name is already out there.  
3 Well, in some sense, yes, that person's name is out there, but  
4 that person's name isn't out there as a government witness.  
5 There is a big difference. So that's why we don't -- that  
6 crossover, we don't think --

7 THE COURT: And that wouldn't, in fact, feature at all  
8 in a potential balancing analysis, assuming you were doing  
9 common law. I mean, it just seems like maybe that would come  
10 into play.

11 MR. HARBACH: It might. But I think that also might  
12 depend on the category of stuff we're talking about.

13 THE COURT: Okay.

14 MR. HARBACH: So I would like to make -- I think it is  
15 also reiterating the second half of where we are procedurally.  
16 I have talked about what the government has done. I want to  
17 talk about -- a little bit about the position the defense has  
18 taken.

19 They -- and Mr. Bratt alluded to this briefly. They  
20 have attached numerous gratuitous, irrelevant, and unnecessary  
21 exhibits to both their motions to compel and their Rule 12  
22 motions.

23 I will direct -- I will shorthand this by directing the  
24 Court to pages 19 and 20 of our motion for reconsideration for  
25 examples of what I'm talking about. I'm not going to go



1 through them in detail here, but those are the examples.

2 To summarize, these are exhibits that are sensitive  
3 information that is utterly irrelevant to what they cite the  
4 exhibit for. And to boot, part of -- the part --

5 THE COURT: Well, I know that that's your view, and you  
6 might be right, but I still need to decide is this a judicial  
7 document or not? Apply the correct standard.

8 And then these issues of, well, it's not really  
9 important to their argument, or I think it's unrelated, or I  
10 think it's frivolous, sort of gets you down a rabbit hole that  
11 is -- is secondary to the first question which is, is this a  
12 judicial document?

13 MR. HARBACH: I -- I -- I suppose that's in the eye of  
14 the beholder. But in the government's view, it is an important  
15 characteristic of the posture we're in that, Number 1, they  
16 have done this and, Number 2, they have refused to entertain  
17 anything short of wholesale production of every single exhibit  
18 that they have except for PII. That's the -- that's the second  
19 thing. And then the third thing is -- and this one is a little  
20 puzzling to me -- but they have repeatedly purported to take no  
21 position on any particular document.

22 They have -- they have said that as recently, I think,  
23 as last night -- that they take no position on any particular  
24 document.

25 THE COURT: I don't know. Perhaps, it has something to

1 do with the burden. Who has the burden to make the showing?

2 MR. HARBACH: To make what showing?

3 THE COURT: That sealing is warranted and that we  
4 should deviate from the presumption of openness.

5 MR. HARBACH: Well, I think it depends whether a common  
6 law right of access or a First Amendment right of access  
7 attaches.

8 THE COURT: Either way, whichever standard applies, the  
9 party seeking the sealing or the redaction has to make the  
10 showing. You would agree with that; right?

11 MR. HARBACH: Well, I actually think it depends.

12 THE COURT: Okay.

13 MR. HARBACH: But I'm going to put meat on those bones,  
14 I promise.

15 The last point I want to reiterate is that I don't know  
16 why they haven't taken any position on any particular motion.  
17 Maybe they can't articulate one on any particular document that  
18 is sufficiently tailored to why the document was put in there;  
19 I don't know. But I do know they've had the opportunity to.  
20 Because we've had multiple rounds of conferrals. We have been  
21 careful. We have been thorough. We have made good faith  
22 efforts. We have sent them some of the same red box-type  
23 documents that we have sent the Court.

24 And they -- like I said a minute ago, zero order [sic],  
25 refuse to apply any redactions beyond PII. So they've filed

1 exhibits that are gratuitously bloated. They take no position  
2 on any given document. They refuse to agree to any redactions  
3 at all besides social security numbers and email addresses.  
4 And they know that publications of witness' names and  
5 statements endanger them. This is not about Donald Trump  
6 vindicating the First Amendment. It's just not. And we have  
7 to call it out for what it is.

8           So why do I say that? Because that informs our  
9 position in the degree of skepticism we have when they attach a  
10 document that includes 17 pages, like, for example, the  
11 document that -- that I think lists out all of the names of the  
12 FBI agents who were at the Mar-a-Lago search and they cite that  
13 for the proposition in their brief -- it's -- its proposition  
14 in brief and then cite. And the proposition in the brief is  
15 agents were communicating on the day of the search. And then  
16 they cite this exhibit. It's gratuitous. And so I think when  
17 Your Honor is rightly trying to --

18           THE COURT: Let me ask you, let's say we did something  
19 like a half measure which is, okay, let's use a legend of  
20 anonymous names. Let's say there is somebody from NARA in the  
21 documents, "NARA official Number 1." And then we have a little  
22 chart and then we substitute all of the names. And then we put  
23 those in there as placeholders and then maybe we have a  
24 hearing, we use those anonymous descriptors. These are the  
25 sorts of mechanical challenges that are presented by these

1 matters. So I'm trying to manage this.

2 MR. HARBACH: I know. I know you are. I know you are.

3 THE COURT: So what do you have to say about  
4 potentially that as an option?

5 MR. HARBACH: I hate to sound like a broken record.  
6 And I'm sorry, but it really depends. And so if it would suit  
7 Your Honor, I think one of the -- one of the categories that  
8 you -- sorry -- the list of categories in the agenda that you  
9 wanted us to address included names of witnesses, substances of  
10 their statements, grand jury stuff, search warrant  
11 applications, and then a miscellaneous category.

12 Would it be helpful for me to talk about those?

13 THE COURT: Yes, it would be.

14 MR. HARBACH: Okay. So let's -- I mean, I don't think  
15 I need to say a whole lot more about the names of potential  
16 government witnesses. So I'm going to move on to the  
17 substantive statements, the -- what we -- what we have --

18 THE COURT: Before you move on from that category, I  
19 just want to understand it. Again, absolutely no minimization  
20 of potential threats, but -- is there any additional factual  
21 information that you can provide the Court to substantiate  
22 this -- this concern that publication of names will actually  
23 lead to intimidation? Of course, we have intimidation on the  
24 one hand. We have discomfort, perhaps, on the other end of the  
25 spectrum. Obviously, we live in an age of the internet.

1 And -- and at some point, you know, it may not be possible to  
2 entirely shield everybody from some degree of public exposure  
3 on the internet.

4 And so I think it's quite challenging to try to come up  
5 with reasonable solutions. Mindful, of course, things of  
6 physical threats, concrete, reasonably specific intimidation  
7 concerns, anything that is expressed. I went through all the  
8 cases that you cited, to talk about where courts have done  
9 closure. And all of those really came on the heels of  
10 specific, express concerns by witnesses that had actually  
11 received intimidation from either a co-defendant or something  
12 along those lines.

13 And what I haven't really seen is this blanket request  
14 that anybody on the list, their names, is off the table, and  
15 then to even go further and say none of their statements, even  
16 if substantively used in the motions.

17 So I think your position to some extent is somewhat  
18 unprecedented. And I have also gone through, trying to find  
19 other high profile cases to see if measures like this, this  
20 blanket request for no names, no statements, has ever really  
21 happened, even in Mafia cases and -- and in other political  
22 cases with those sorts of ramifications. Again, it's been hard  
23 to find those examples. I have really tried to be as  
24 comprehensive in the analysis here. And I'm -- I'm happy to  
25 hear more argument from your end on that, if you have any.

1 MR. HARBACH: I do, Your Honor.

2 On the names, the -- in terms of the -- not only the  
3 record that we have, but the record that is required by the  
4 case law, and the cases that talk about the judges -- the  
5 judicial branch's obligation to protect people and what -- and  
6 what must be shown.

7 You mentioned that you've looked through our cases.  
8 There -- in our brief there are cases cited at -- and by our  
9 brief, I mean our motion for reconsideration. There are cases  
10 cited at pages 14 and 15 in our brief, essentially making the  
11 point that courts imposing protections about witness names and  
12 the like are -- are -- are and should be prophylactic. It  
13 shouldn't take somebody to get threatened or get injured in  
14 order for a court to endeavor to protect identities of  
15 witnesses.

16 THE COURT: I think you're right about that; you don't  
17 need -- you don't need a materialized threat, but you also need  
18 a sufficient showing, and I think that's the challenge here, is  
19 what is enough, what is -- what is -- in the Addison case, for  
20 example, you had an individual who expressed concerns directly  
21 to the Court in a two defendant case. There are others that we  
22 have gone through, Addison.

23 MR. HARBACH: So there is Doe.

24 The fact that the government did not identify specific  
25 threats on the record did not make the risk entirely

1 speculative. And direct threats are not a strict condition  
2 precedent to a District Court's granting of a closure motion.

3 THE COURT: I agree with that.

4 MR. HARBACH: So in terms of the -- the showing that we  
5 have to make, I'm -- I'm not going to -- I'm not going to get  
6 on a soapbox right here about all of the -- all that's in our  
7 papers. There is plenty in our papers about -- that  
8 have -- that has happened in any case in which --

9 THE COURT: In this proceeding, have there been any  
10 allegations of intimidation by defendants?

11 MR. HARBACH: No.

12 THE COURT: Okay.

13 MR. HARBACH: But that is far from the --

14 THE COURT: Excuse me. Are there any witnesses in this  
15 case who are on the list who have come to the government with  
16 expressed concerns about their personal safety?

17 MR. HARBACH: We have made reference to them in our  
18 filings, including the sealed one --

19 THE COURT: Okay. Okay.

20 MR. HARBACH: -- that we tried to keep ex-parte.

21 THE COURT: Right. And, of course, I know you want to  
22 do things ex-parte, and I acknowledge that, but that's also a  
23 very high standard. And, again, there really was no basis to  
24 keep that ex-parte. I know you take a different view.

25 MR. HARBACH: We do.

1 THE COURT: Okay. Okay.

2 So -- all right. So let's talk about the actual  
3 categories of information. I think we've talked about names.  
4 I understand your view there.

5 MR. HARBACH: Statements. You have mentioned that a  
6 few times.

7 THE COURT: Yes.

8 MR. HARBACH: And, you know, the defense has chided us  
9 in their materials for arguing that -- or allegedly taking the  
10 position that the materials subject to the Jencks Act,  
11 you know, they use words like "automatically." Should  
12 automatically be protected or like it's some label that we can  
13 slap on anything and it carries no meaning. That's wrong.

14 As we say in our papers, the Jencks Act is frequently  
15 talked about as requiring disclosure of witness statements  
16 after they testify at trial. But it is, in the first instance,  
17 a prohibition. No statement or report in the possession of the  
18 United States, which was made by a government witness or  
19 prospective government witness, shall be the subject of  
20 subpoena, discovery, or inspection until said witness has  
21 testified on direct examination.

22 Why? As we sit -- one of the few things we did say in  
23 our opening paper on this, was why that is. And the Supreme  
24 Court has answered that question. It is to prevent defendants  
25 from rummaging through confidential information containing



1 matters of public interest, safety, welfare, and national  
2 security. That's Goldberg vs. United States.

3           So the other thing that is important to remember about  
4 the Jencks Act is that it prohibits compelled production of  
5 these documents, these witness statements to the defense. Not  
6 the public. The defense. They're not even producible to the  
7 defense until after a witness actually testifies at trial.  
8 There is a reason for that. They're important. They're not  
9 just -- they're just not any -- they're not just statements.  
10 There is a reason the Jencks Act is in -- is in place.

11           In other words, once the witness is -- the witness  
12 testifies at trial, and the witness's identity is unequivocally  
13 out in the open, then the witness's testimony and prior  
14 statements to the government are too. So you're quite right in  
15 what you said a few minutes ago, Your Honor, that there is  
16 going to come a time. There is going to come a time when  
17 witness identities are going to be out there, but now is not  
18 it.

19           THE COURT: Do you have an idea when the government  
20 would be willing to publish its government witness list?

21           MR. HARBACH: Well -- excuse me.

22           THE COURT: Ordinarily that happens, you know, within a  
23 reasonable period of time prior to trial.

24           MR. HARBACH: Yes, it happens within a reasonable  
25 amount of time prior to trial. I'm tempted to say depending on

1 when we were ordered to, we would have to assess that.

2 THE COURT: Right. Okay.

3 MR. HARBACH: I mean it's -- I'm just being honest.

4 THE COURT: No. No. No. That's fair.

5 Okay. So as far as the statements of the witnesses and  
6 the Jencks Act argument, are you aware of any authority,  
7 though, that says that if Jencks material is, again, implicated  
8 in a substantive pretrial motion, that even though it qualifies  
9 as Jencks, we redact it from public view?

10 MR. HARBACH: It's -- it's not just Jencks. It's  
11 Jencks -- and all of the Jencks material was produced subject  
12 to the protective order.

13 And give me one second. There was a point I want to  
14 make here.

15 THE COURT: Of course, the protective order, though,  
16 contained a provision that would allow the defendants to seek  
17 court authorization, so there is a mechanism in there, and as I  
18 said before, it doesn't supplant standard legal principles.

19 So I was unable to find any cases that say that by  
20 virtue of being Jencks material -- even if made part of a  
21 pretrial motion -- it then warrants redaction.

22 MR. HARBACH: Well, you wouldn't. It wouldn't be by  
23 virtue of it just being -- just by virtue of --

24 THE COURT: Or a witness statement, let's say, in a  
25 pretrial substantive motion.

1 MR. HARBACH: Well, the protective order intervenes,  
2 first of all. And if -- if -- this was part of what resulted  
3 us being in this position in the first place.

4 Give me one second.

5 You know, a protective order entered for good cause, in  
6 the government's view, means that there -- and we have made  
7 this point in our papers, so I will be brief. There has to be  
8 some showing from them. There has to be something. The -- the  
9 provision that Your Honor is talking about presupposes that.  
10 It doesn't -- it shouldn't operate -- and many cases say  
11 this -- that all -- if you're a defendant and you want to make  
12 something public, all you have to do is attach it to a motion  
13 and say, well, it's the government's burden now. That  
14 wouldn't -- that would gut the purpose -- that would gut the  
15 protective order in the first instance, that would eviscerate  
16 it.

17 So, again, the portion of the protective order that  
18 contemplates the process that Your Honor is talking about  
19 contemplates some showing. We have conferred with them  
20 repeatedly. They say nothing. They say nothing. So all we  
21 have to go on about why they are attaching something is what it  
22 says in the brief. And then all they say in any conferral is  
23 PII. We're trying.

24 THE COURT: No, and I understand. And I have  
25 appreciated the red box; those are very helpful. So I have

1 been able to go through those exhibits.

2 MR. HARBACH: So if -- okay. I -- I would like to move  
3 on, if it's all right with Your Honor.

4 THE COURT: Yes. It is 2:23. I want to make sure I  
5 give the other side a chance to weigh in on these issues.

6 MR. HARBACH: Understood.

7 Let's talk about grand jury materials just for a  
8 minute. Your Honor's order listed transcripts, exhibits,  
9 subpoenas, and orders from expired grand jury investigations.  
10 So I think it's useful to break that down.

11 The first three categories, grand jury transcripts,  
12 exhibits, and subpoenas, all of which are in play here, all of  
13 that has been produced as Jencks material or in discovery  
14 subject to the protective order.

15 So best case scenario, if you're looking for a  
16 disclosure, is that the standard that applies to discovery  
17 under a protective order should apply. In other words, one  
18 could take the view that that's grand jury material subject to  
19 Rule 6(e) and, therefore, that's the end of it.

20 My point is that, well, this is grand jury material  
21 that has been produced because we have an obligation to produce  
22 it. We have an obligation to produce it because it's Jencks  
23 material.

24 And so how should the Court treat that? The Court  
25 should treat that as material produced -- as discovery produced

1 in connection with the protective order.

2 THE COURT: So the 6(e) concerns are no longer active  
3 on that material; is that correct?

4 MR. HARBACH: I didn't say they were no longer active.  
5 What I mean to say is that the best argument for disclosure  
6 still -- still runs up against the discovery attached -- excuse  
7 me -- the discovery subject to a protective order to which  
8 there is no common law or First Amendment right of access.  
9 That's my point. It's not that 6(e) doesn't apply. It's that  
10 we need -- we need not rely on 6(e) to keep it out of the  
11 public eye because it's been produced pursuant to a protective  
12 order.

13 The last category of stuff orders from an expired grand  
14 jury investigation. Now, the defense has requested some of  
15 these from the government. And we've produced them. So they  
16 have them. We have produced them, again, subject to a  
17 protective order.

18 THE COURT: Uh-huh.

19 MR. HARBACH: But there is an additional complication  
20 with these; namely, that they're sealed. In other words --

21 THE COURT: So right now are there any proceedings  
22 underway to petition the D.C. court for a release of these  
23 materials? Because I think -- what I have seen in the papers  
24 thus far, there is anticipated challenges to some of those  
25 orders, and so they're going to become part of this judicial

1 proceeding in some form. And I'm trying to map out this -- any  
2 lingering 6(e) issues.

3 MR. HARBACH: Yes and yes. Yes, we see the same things  
4 you do about some of those materials being relevant to  
5 litigation that the defense intends to launch down here. And,  
6 yes, we are in the process of trying to get those things  
7 unsealed with redactions, so that they can be -- so that they  
8 can be released, and released publicly.

9 THE COURT: And that's on the bucket of orders, court  
10 orders.

11 MR. HARBACH: Well, orders or materials -- I will call  
12 them ancillary grand jury proceedings up there in Washington.  
13 There have been a few. I just mean --

14 THE COURT: Do you know how long it's going to take to  
15 get answers on that stuff?

16 MR. HARBACH: I -- less than a week, I would say.

17 THE COURT: Mr. Bratt is --

18 MR. BRATT: If I may speak from here, Your Honor.

19 THE COURT: Yes.

20 MR. BRATT: There is -- in conjunction, particularly  
21 with one of the motions -- what they styled the motion -- what  
22 the Trump defendant styled the motion for relief, we have begun  
23 that process. Because there are other parties with interests  
24 in that, we have to get them apprised as well. But once we get  
25 something to Chief Judge Boasberg, he usually rules pretty

1 quickly.

2 THE COURT: Okay. Okay.

3 MR. HARBACH: So it shouldn't take very long,  
4 Your Honor.

5 So that covers the grand jury materials.

6 Would you like to talk briefly about search warrant  
7 applications?

8 THE COURT: Am I correct that the grand jury  
9 investigations are, at this point, at least the D.C. one, has  
10 that expired?

11 MR. HARBACH: There is no current grand jury  
12 investigation underway in Washington related to this case.

13 THE COURT: Okay.

14 MR. HARBACH: But I hasten to add that that doesn't  
15 mean that 6(e)'s protections terminate either.

16 THE COURT: What happens if the defendants want to use  
17 that material in this judicial proceeding? Then the proper  
18 route would be to petition the Court in D.C. for use of those  
19 materials.

20 MR. HARBACH: The defense has already requested some of  
21 those materials. And the government has volunteered to  
22 intervene to try and obtain them.

23 THE COURT: Okay.

24 MR. HARBACH: And further, to obtain versions from the  
25 Court that could be publicly releasable. We're working on

1 that. That's where the redactions come in.

2 THE COURT: Okay. Any other categories in the  
3 prehearing order that you would like to address?

4 MR. HARBACH: Search warrant applications briefly.

5 THE COURT: Okay.

6 MR. HARBACH: I promise --

7 THE COURT: No, there is a lot.

8 MR. HARBACH: There is a lot. It's true.

9 The search warrant applications we have produced to the  
10 defendants in unredacted form. The search warrant applications  
11 have been produced to the defense in unredacted form. They've  
12 got all of them. That's the first point.

13 On the question of public access to those --

14 THE COURT: Uh-huh.

15 MR. HARBACH: -- several of them have been attached to  
16 their Rule 12 motions as exhibits.

17 THE COURT: Uh-huh.

18 MR. HARBACH: Unsurprisingly, since some of them are  
19 motions to suppress. And --

20 THE COURT: And that's not uncommon.

21 MR. HARBACH: That's right. And all that we're  
22 suggesting -- and this is what we have suggested to them -- is  
23 that, time out, there is a judge in the Southern District of  
24 Florida who has already entertained arguments about the  
25 openness of these search warrant applications. And in the case



1 of the search of Mar-a-Lago, progressively redacted more, I  
2 think, on three -- three occasions? Two or three occasions.

3 THE COURT: Of course, that was pre-indictment;  
4 correct?

5 MR. HARBACH: That's -- well, one of the -- one of the  
6 adjustments was post-indictment. And then another adjustment  
7 for the superseding indictment. So --

8 THE COURT: But you would agree that the analysis is a  
9 bit different when it's an indicted case versus in a  
10 pre-indictment posture?

11 MR. HARBACH: Yes, yes.

12 THE COURT: Okay.

13 MR. HARBACH: All I'm saying is that -- and, again,  
14 none of this concerns the defendants' access to it at all.

15 THE COURT: Right. But if they want to use these  
16 materials, it's done not, you know, rarely in the course of  
17 seeking suppression relief -- and I see this all of time.  
18 Attachments are filed as exhibits and we rule upon them. We  
19 have hearings. And there is really never any issue. But here  
20 there appears to be a serious issue.

21 MR. HARBACH: Okay. And I hope I have a proposal that  
22 might make some sense.

23 THE COURT: Okay.

24 MR. HARBACH: What we have proposed at the moment is  
25 that the -- the publicly facing versions of those search

1 warrant applications that Judge Reinhardt has already approved,  
2 be substituted immediately for the exhibits attached to the  
3 defendants' motions so that they can be released and be public  
4 facing. And, furthermore, that if, as we approach the hearing,  
5 the defendants believe that -- that Judge Reinhardt's decisions  
6 should be revisited about what should be redacted, they can  
7 make a motion.

8 Our point is, don't just assume that you can shift the  
9 burden to the government by attaching the unredacted motion to  
10 a motion to compel.

11 And I just want --

12 THE COURT: But that's a motion to suppress; correct?  
13 It's not a motion to compel.

14 MR. HARBACH: Sorry.

15 THE COURT: So we're back in the 12(b) stage. And why  
16 is it their burden to justify the sealing of information that  
17 they don't assert an interest in closure over?

18 MR. HARBACH: Because of the -- the residual protection  
19 that search warrant applications have. It may well be that a  
20 further unsealed version of that pleading is appropriate.

21 THE COURT: Okay.

22 MR. HARBACH: And that's why we've said fine, put the  
23 one that's publicly already been approved out there.

24 So -- and the last point is to something Mr. Woodward  
25 said this morning. He said he would have expected to know

1 about the existence of these public facing search warrant  
2 applications. I mean, we produced the unredacted versions to  
3 them. We only realized that it might even be relevant for them  
4 to know about redacted versions when they attempted to attach  
5 them as exhibits, and that's when we told them about them. So  
6 that -- there is just nothing there on that.

7 I will make one last point before I sit down about the  
8 Sixth Amendment, only because it's come up this morning.

9 I think Your Honor knows this. It's been mentioned  
10 nowhere in any of the defendants' briefing. And that, coupled  
11 with the fact that they have purported to take no position,  
12 means they should not be heard to claim that the Sixth  
13 Amendment right to a fair trial or a right to an open trial  
14 allows the relief that they're seeking. That's all I will say  
15 on that for now.

16 THE COURT: Okay. Thank you, Mr. Harbach.

17 Who is going to be taking the lead for defense counsel  
18 on this?

19 MR. BOVE: I'm going to address most of it, if that's  
20 okay with the judge.

21 THE COURT: Okay. Mr. Bove.

22 MR. BOVE: And Mr. Woodward is going to address the  
23 Rule 60 implication.

24 THE COURT: Okay. I'm ready.

25 MR. BOVE: Thank you, Judge.

1           So procedurally this is an absolutely frivolous motion.  
2           And that matters today because President Trump is here in this  
3           courtroom listening to that presentation when he should be  
4           preparing for super Tuesday and campaigning --

5           THE COURT: All right. I would like to talk about the  
6           merits of the motion, Mr. Bove.

7           MR. BOVE: And I would too, Judge. But if the shoe  
8           were on the other foot and we had filed a motion for  
9           reconsideration like this, I can only imagine the things that  
10          would be said about delay tactics.

11          THE COURT: Okay, okay. I take it -- that's fine.  
12          Can we talk about the actual legal issues?

13          MR. BOVE: Yes.

14          THE COURT: I understand procedurally frivolous. Is  
15          your argument just related to time spent elsewhere, or does it  
16          have something to do with the mechanism by which motion -- the  
17          reconsideration was sought?

18          MR. BOVE: With respect to the procedural point,  
19          Your Honor has cited Chicago Tribune, the Press Coalition cited  
20          it. They didn't address it. These things -- I mean, they all  
21          but admitted it, standing here procedurally. But there are  
22          important interests at stake. And I want to address the merits  
23          head on.

24          President Trump is entitled to a public trial, and that  
25          includes public motion practice. There is nothing about the

1 protective order or any other aspects of these proceedings that  
2 changes that. And -- frankly, I had trouble following what was  
3 said at the end of Mr. Harbach's argument. But to the extent  
4 there was any suggestion that we have an obligation to join in  
5 their efforts to keep private materials that should be public  
6 or we forfeit our Sixth Amendment right, that also is  
7 completely frivolous.

8 THE COURT: Well, I think their point is that you  
9 haven't cited the Sixth Amendment in your papers, and that  
10 because there is a protective order in place, there is some  
11 degree of showing that you would need to make to get out from  
12 under the protective order rule.

13 MR. BOVE: We haven't cited the Sixth Amendment  
14 directly because the standard overlaps completely with the  
15 First Amendment standard we've been talking about; that's clear  
16 from footnote 16 of Ochoa Vasquez.

17 In terms of the protective order, it expressly  
18 contemplates in paragraph 7 that there would be some period of  
19 sealing, absent the government's consent, when we file a  
20 motion. And so in order to abide by that -- and I think this  
21 is important. In order to be consistent with the local rules  
22 requirement that you fix a time frame on the requested sealing,  
23 we made a submission to the Court, and we said we are not in  
24 the best position to assess the safety concerns that these guys  
25 are talking about.

1           And so if they want to make a showing, please do. We  
2   are not here to try and harm people or cause harassment to  
3   anyone. On the other hand, we don't know what they know.

4           The one exhibit submitted in this case to try and  
5   substantiate these positions, as Your Honor noted, another  
6   instance of improper ex-parte practice, only supports the  
7   proposition that when the government made gratuitous speaking  
8   allegations in an indictment, that led to harassment of a  
9   witness.

10          THE COURT: Okay. All right. Let's move on. I don't  
11   know if that is fully, fully the case.

12          Moving past that example, though, what is your view on  
13   the witness names as distinct from the substance of their  
14   statements?

15          MR. BOVE: I think it is the -- absolutely the  
16   government's burden to justify the redaction of those names. I  
17   have not seen any showing whatsoever with respect to the names  
18   at issue in any of the motions that have been filed. And --

19          THE COURT: I think their point is just more of like  
20   a -- it's -- it's just obvious. It's obvious that in a case of  
21   intense public scrutiny -- and there is some -- a little bit of  
22   arguable irony that where the First Amendment interests are at  
23   their apex, we're going to actually do less access. But I will  
24   leave that aside for a minute.

25          I think their point is that it's just a common sense

1 point that anybody whose name is associated with any of these  
2 high profile cases will just get online, you know, emails or  
3 tweets or whatever it is, and that we should -- we should  
4 accept that and then draw this, kind of, broad view that any  
5 witness's name should be shielded at least for now.

6 MR. BOVE: So I would just make a practical point,  
7 Judge, because from sitting here this afternoon, the command of  
8 the case law between the Court and the Press Coalition is  
9 pretty intimidating. But from a practical standpoint, we are  
10 at a place in this case where the government is charting a  
11 course that will make it virtually impossible to litigate. And  
12 just -- just the proposal that Your Honor referenced about  
13 creating aliases for each witness, tracking them throughout the  
14 case, that is fundamentally inconsistent with the  
15 Sixth Amendment right that we're talking about and the First  
16 Amendment right. And that is going to be a recurring issue, I  
17 think, when the silent witness rule comes up. Because I would  
18 expect there to be continued efforts to try and litigate this  
19 case in the dark. And that is something that we very much  
20 oppose.

21 And so we think there needs to be case specific reasons  
22 if there is going to be sealing, including with respect to  
23 names. We agree with the point about not needing to be  
24 prophylactic that you made. But at the same time, an exhibit  
25 relating to a different witness not at issue in any of our

1 materials, we don't think meets the government's burden to  
2 justify redacting names, substance of information, all of these  
3 things, out of our briefs.

4 THE COURT: What do you say to their point that  
5 in -- in many respects you haven't taken an affirmative  
6 position on sealing and certain filings? And then secondly,  
7 that some of your references to these individuals or their  
8 statements are gratuitous and unnecessary?

9 MR. BOVE: So with respect to our no position, that is  
10 informed by our information deficit. We don't have the access  
11 to information that they have about the alleged risks and  
12 harassment that people supposedly face. That's particularly  
13 problematic for us in terms of what position we would take when  
14 we're trying to address the request to hide the names of  
15 government participants.

16 And I think there is a basis in the case law and in  
17 logic to differentiate between government actors referenced in  
18 these materials as opposed to lay witnesses. We don't know.  
19 And so, no, we're not going to blindly do what they say. We're  
20 not going to blindly adopt their reasoning. We're not going to  
21 join in a submission to seal things from the Court that the  
22 Press Coalition then comes in and says President Trump wants to  
23 hide these things too. Because that's just not the case. If  
24 they can justify it, great. We're not here to cause harm, as I  
25 said. But it's on them.



1           And in terms of this word "gratuitous," they have a lot  
2 more binders today than I have, Judge, but if they want to  
3 bring up any exhibit that we've attached to these motions, I  
4 will address it specifically. There is nothing gratuitous in  
5 our filings. I think what they really mean is that they  
6 wouldn't have attached as many pages as we attached, and to  
7 that I must say, that's the only course for us. Because if we  
8 did something less than that, then we harm our position on the  
9 merits and we open ourselves up to the argument that they would  
10 inevitably make, and to some extent already have, that we are  
11 cherry-picking quotes from the documents and not giving a fair  
12 and complete treatment.

13           So that's -- that argument, I don't think it actually  
14 bears at all on the sealing frameworks of any -- any of those  
15 that we talked about. What it really is, is an attack on our  
16 integrity as litigators in suggesting that we, for some  
17 improper purpose, are attaching documents to a submission.  
18 That's false, outrageous. And if they want to specifically  
19 talk about any exhibit on here, let's get the binders out.

20           THE COURT: All right. Well, I don't know if time will  
21 permit that degree of detail.

22           MR. BOVE: I'm happy to not get into the binders also,  
23 Judge.

24           THE COURT: Okay. But just as far as the legal  
25 standards are concerned, let me just ensure that I haven't

1 overlooked anything.

2 Do you see any legal distinction in the applicable  
3 standard to apply as between, quote, discovery motions, like  
4 your motion to compel, versus the pretrial motions that are  
5 filed explicitly pursuant to 12(b)?

6 MR. BOVE: No. I think other than this effort to  
7 stretch Chicago Tribune, there is no basis for that. Our  
8 motions to compel are Rule 12(b) motions. There is -- this is  
9 a fabricated standard to try -- to -- in some position to be  
10 able to say that this motion for reconsideration wasn't  
11 frivolous, but there is no basis in the law for that.

12 THE COURT: Okay. All right. Anything you want to say  
13 on the category specifically? There is some grand jury stuff  
14 that I saw sprinkled in, and I just wanted to hear your views  
15 if they differ at all from what Mr. Harbach said.

16 MR. BOVE: They differ significantly, but I'm going to  
17 defer to Mr. Woodward on the grand jury part.

18 THE COURT: Okay.

19 MR. BOVE: On the search warrant affidavits, the idea  
20 that another judge's decisions applying a different framework  
21 with different considerations, in a pre-charge environment,  
22 should drive the Court's decision about sealing of those  
23 materials. It doesn't make any sense.

24 And, you know, again, from the practical perspective,  
25 this idea of, oh, we will just substitute in that exhibit, we

1 will dump this one in here, we will slot that one here -- we  
2 all have a lot of work to do. And if that needs to happen to  
3 protect someone, we're here for that. But if it needs to  
4 happen because it makes these guys feel better because they  
5 should have said more in the first motion, we're not here for  
6 that.

7 THE COURT: All right. Thank you.

8 Mr. Woodward.

9 MR. WOODWARD: Thank you, Your Honor.

10 I want to focus on the grand jury proceedings. I do  
11 want to touch on a few issues that Mr. Harbach raised that got  
12 us to the grand jury proceedings. I want to start with the  
13 protective order in this case and a few statements that  
14 Mr. Harbach made about the protective order, and his reliance  
15 on the fact that the protective order entered by another judge  
16 in this case gives good cause to the sealing of this  
17 information --

18 THE COURT: Well, wait a minute. It was a motion for a  
19 protective order that was unopposed --

20 MR. WOODWARD: Your Honor, if I may interrupt you right  
21 there.

22 THE COURT: Yes.

23 MR. WOODWARD: Mr. Nauta didn't have counsel in this  
24 case when that motion was filed. He didn't have counsel in  
25 that case when the motion was granted. And you will recall, I

1 came to see Your Honor in August of 2023 ex-parte, and I  
2 complained about the way that that protective order worked.  
3 Now, you subsequently --

4 THE COURT: There was no motion to lift it or to modify  
5 it.

6 MR. WOODWARD: No, Your Honor, there was not. But to  
7 say that I -- that we have not complained about the protective  
8 order is not true because --

9 THE COURT: But, if anything, that was lukewarm. It  
10 didn't result in a motion before the Court. And so I'm still  
11 left, at the end of the day, with a protective order that was  
12 entered without any opposition, as far as I can tell. And so  
13 that is in place.

14 MR. WOODWARD: That's correct, Your Honor. Now, the  
15 other thing that Mr. Harbach said about the protective order is  
16 that it's to apply to things like grand jury materials.  
17 However, in the million documents and millions of pages of  
18 materials that have been produced in this case, every single  
19 page has been designated subject to the protective order.  
20 Every single piece of discovery in this case has been  
21 designated subject to the protective order.

22 And the point that I made back in August is that, as a  
23 result, before we reference any discovery in this case, we have  
24 to come see Your Honor, assuming the government does not  
25 consent.

1           And the problem that I had back in August is that that  
2       means that I have to go to the government, disclose my defense  
3       strategy in the motion that I'm about to bring. They say, no,  
4       you cannot disclose.

5           They talk about a desire to not disclose witness  
6       information and witness identifications, and to keep that  
7       secreted, whether in the grand jury or otherwise. We're  
8       fighting over the sealing of Mr. Nauta's own statements.  
9       They've asked us to keep Mr. Nauta's own statements, his grand  
10      jury testimony, his FD302 form, sealed under the protective  
11      order. So there is no question that Mr. Nauta is not going to  
12      be a witness for the government in this case.

13           The second point that I will make is that we have  
14      concerns about the way that the -- they've handled this  
15      process. And we think that when they reference skepticism, we  
16      think Your Honor needs to look at this issue with a degree of  
17      skepticism. Take the grand jury issue, for example. What they  
18      were supposed to have done -- this is a sealing matter before  
19      Your Honor. It's not a case in the District of Columbia. And  
20      so what they were supposed to have done under Rule 6(e) is gone  
21      to the judge in the District of Columbia, petitioned that judge  
22      to transfer the material to Your Honor. And that judge --

23           THE COURT: But is that a mandatory procedure? Can't  
24      they just petition the judge for -- to make a finding that  
25      maybe the secrecy elements are no longer as -- as heightened.

1 MR. WOODWARD: That's -- that's right. They can ask  
2 the judge in D.C., and they have, to unseal the entire  
3 proceeding. But that's not what they're doing with respect to  
4 the materials they just referenced. They're not asking for the  
5 total unsealing of those materials. They're not going to  
6 identify the Trump attorney and those materials. And so  
7 they're abusing even that process. They're taking from  
8 Your Honor the authority --

9 THE COURT: So what relief can you seek then? If -- if  
10 you're not pleased with whatever mechanism they're using in the  
11 D.C. proceeding, then is there any avenue for you to -- for you  
12 to file a motion for such access, either there or here?

13 MR. WOODWARD: That's why I raise it now. I don't  
14 know.

15 THE COURT: Okay. But I can't work with just amorphous  
16 requests ore tenus. Like, I either get a motion or I don't.

17 MR. WOODWARD: What you can do, Your Honor, is you can  
18 force them to follow the rules, which is what you did. You can  
19 force them --

20 THE COURT: Which rule?

21 MR. WOODWARD: The rule against -- the rule of a  
22 presumption of disclosure. You can force them to make an  
23 articulate -- a particularized assertion for why materials need  
24 to remain sealed.

25 THE COURT: And that is clear. And I have said that

1 from the outset of this case, in numerous orders, even before  
2 the motion for reconsideration was filed. And so that, I  
3 think, is a baseline principle that I have voiced repeatedly.  
4 And here we are now trying to sort out these issues.

5 So in your view, Mr. Woodward, what do you think would  
6 be helpful for me to know as a matter of grand jury materials  
7 as referenced in the pretrial motions?

8 MR. WOODWARD: I think when they come to Your Honor  
9 with a D.C. grand jury document that is redacted and they ask  
10 you to honor those redactions, that's not the proper process.  
11 The proper process is to petition the D.C. district court, the  
12 chief judge there, to transfer that to you -- this is  
13 Rule 6(e). I mean, this is a Supreme Court case, 40 years ago  
14 this was decided by the Supreme Court. To transfer that to  
15 you. The judge can document, in this case, his concerns about  
16 unsealing, assuming he doesn't unseal the entire record. And  
17 then you, Judge, get to decide. They don't get to continue  
18 shielding their investigation in D.C. now that they've brought  
19 this case in Florida.

20 The Special Counsel references grand jury proceedings.  
21 I have been asking them for weeks now to identify all of the  
22 various grand jury proceedings that occurred in D.C. that have  
23 not yet been disclosed in this case. I know about several  
24 because I represented the witnesses in those cases. And I know  
25 that there is a substantial amount of litigation that occurred

1 before that grand jury that the Court doesn't know about, that  
2 my colleagues don't know about, that I can't talk to my client  
3 about because I'm under a sealing order in D.C.

4 I have asked them to identify each proceeding in the  
5 D.C. grand jury that involves this -- these -- this case. They  
6 haven't done it. I followed up with them on Tuesday night. I  
7 said, Where are we on this? No response.

8 THE COURT: Well, I think what they said is that  
9 they're in the process of petitioning the D.C. court for the  
10 unsealing, at least partially, of materials. I don't know if  
11 that's a comprehensive set. It's hard for me to know, but it  
12 sounds like there is a process underway.

13 MR. WOODWARD: I don't believe that they were referring  
14 to what I'm talking about -- they can correct me. I think  
15 they're referring to the motion -- the motion that has been  
16 submitted to the Court, not -- "under seal" is not the right  
17 way to say it -- but I don't believe that they're putting  
18 together -- Your Honor should have a list of -- it should be no  
19 different than if the grand jury investigation had been  
20 conducted in the Southern District of Florida. But Your Honor  
21 has no insight into what happened in D.C. They shielded all of  
22 that from this Court, and they're continuing to shield it from  
23 the defendants now.

24 So what we -- you know, the -- they ridicule us for  
25 taking no position, but you're right, Your Honor, it is not our



1     burden to justify sealing, which is why we filed the motions  
2     the way we did. We filed a motion to disclose discovery under  
3     the protective order. And in response, the Special Counsel's  
4     office still doesn't justify sealing.

5             Your Honor, I will just make two quick points on the  
6     identification of witnesses. You know, it's shocking to me  
7     that you suggest that we simply use monikers for all the  
8     witnesses and yet they reject that solution. I mean, what is  
9     actually going on here that precludes us from -- we've  
10    litigated a number of different proceedings here where we --  
11    you know, "Trump Employee 1" or -- you know, why doesn't that  
12    work? Yet they don't defend or otherwise. You know, "it  
13    depends" is not an answer. We are not in law school anymore.

14            Finally, I also don't understand the difference between  
15    referencing material -- well, the reference to gratuitous  
16    attachments. Your Honor surely would not allow us to limit  
17    your review of case law to only the sections quoted or to only  
18    the page that is cited; right? That's not the way we operate.  
19    Context matters. And context matters in this case. It's not  
20    our obligation to go and cherry-pick, as my colleague,  
21    Mr. Bove, suggests, the sections of exhibits that matter to us.  
22    We would be misleading the Court; right?

23            Now, if the Court, in its prerogative, doesn't want to  
24    review the 37-page warrant affidavit, so be it. But for us to  
25    assume that the Court is uninterested in the -- in the portions

1 of the exhibits -- we don't do that at trial and we don't need  
2 to do that pretrial either.

3 And so unless the Court has any further questions for  
4 me, I will sit down.

5 THE COURT: All right. Thank you.

6 Any further defense argument on the sealing or  
7 redaction issues?

8 MR. IRVING: No, Your Honor. Not from me.

9 THE COURT: Any rebuttal from the government?

10 MR. HARBACH: Okay. Just a couple observations based  
11 on, I guess, Mr. Woodward's presentation, and I guess Mr. Bove  
12 made mention of this also.

13 The notion that they -- they made these gratuitously  
14 bloated exhibits attachments to their motions for the sake of  
15 completeness for the Court, first of all, if Your Honor will go  
16 back and look at the examples that I mentioned earlier in our  
17 pleadings.

18 THE COURT: Uh-huh. I think you told me pages 19 and  
19 20 maybe?

20 MR. HARBACH: I think it may have been 14 and 15, but  
21 at this point --

22 THE COURT: I have it -- or I trust my -- one of my  
23 good law clerks will have written that down.

24 MR. HARBACH: Very well. Those are in there. And  
25 I'm -- I could definitely bring out the binders and go through

1     them, but I don't think that is necessary.

2             Here is the point. For something like that, the way  
3     this should have gone, they want to attach, you know, the  
4     entirety of something. They say, hey, David, we're interested  
5     in attaching this because we want to -- we want to be able to  
6     say in our motion that FBI agents were in communication on the  
7     day of the search warrant, and we think it's important that  
8     Judge Cannon know that. And that's all they would have to say.  
9     We say, okay, that exhibit that you're showing there, there is  
10    a lot of sensitive information in there. We think that -- here  
11    is a redaction that we propose that we think accomplishes your  
12    objective.

13            It's not cross-examination about defense strategy.  
14    It's not invading the defense camp about what their overall  
15    strategy is.

16            THE COURT: But it does require them to basically get  
17    your permission every time they want to file something. Isn't  
18    there something sort of unusual about that?

19            MR. HARBACH: It's not -- it's not -- it doesn't  
20    require them to get our permission. It does require them to  
21    get permission. And, unusual? Perhaps. But what's not  
22    unusual is the protective order, like the one that's at issue  
23    here. It has meaning. It's -- it's not just something we  
24    always do, even though we always do it. It's important, and  
25    especially under these circumstances.

1           THE COURT: Is there anything to make of Mr. Woodward's  
2 point that in the unclassified discovery universe, which I  
3 believe is over a million pages, that all of that is designated  
4 confidential?

5           MR. HARBACH: Well, all of that is subject to the  
6 protective order.

7           THE COURT: Okay. Or -- or -- yes, yes.

8           MR. HARBACH: Yes, it was all produced pursuant to the  
9 protective order. That is accurate.

10          THE COURT: So for a defendant to use any of that  
11 material, even if it really doesn't trigger sensitivity  
12 concerns, nonetheless, would require -- and I get it. This is  
13 in the protective order, and I think there is a mechanism to  
14 address it, and there have been motions to file discovery on  
15 the docket which now represent, I think, five motions,  
16 including the motion for reconsideration.

17          MR. HARBACH: All I hope is clear to Your Honor is that  
18 you shouldn't question our bona fides about being willing to  
19 work with them on that.

20          THE COURT: And I do not. I do not. To be clear, I  
21 know -- I can tell that you have made good faith efforts to  
22 work with them in terms of their redactions. You have offered  
23 the red box assistance which -- which isolates the issues. But  
24 I think what is clear is that these issues are complicated.  
25 And that trying to navigate these redaction sealing issues is a

1 challenge. So to try to find reasonable measures that are  
2 mindful of witness safety is certainly paramount, but, of  
3 course, the Court is obligated to respect the openness that is  
4 presumed in criminal proceedings. So I will endeavor to do  
5 that, take your motion for reconsideration under advisement.

6 Are there any other issues you wish to present now?

7 MR. HARBACH: No, Your Honor. Thank you.

8 THE COURT: Okay. Well, it is almost 3:00. We are on  
9 schedule. Thank you all for your time and attention today.

10 Thank you to all of the court personnel and the various  
11 security members of the courthouse and the Marshals Service for  
12 all they have done to make this hearing possible.

13 And that is all. Thank you.

14 (These proceedings concluded at 3:00 p.m.)

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C E R T I F I C A T E

I hereby certify that the foregoing is an accurate transcription of the proceedings in the above-entitled matter.

DATE: 03-06-2024 /s/Laura Melton  
LAURA E. MELTON, RMR, CRR, FPR  
Official Court Reporter  
United States District Court  
Southern District of Florida  
Fort Pierce, Florida

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